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DEFENSE CONTRACT AUDIT AGENCY

FREEDOM OF INFORMATION ACT

PROCESSING GUIDE

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DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
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CMR

DCAA PAMPHLET
5410.14

January 1991

FOREWORD

Each year DCAA receives approximately four hundred Freedom of Information Act (FOIA) requests for access to its records. Under the terms of the Act, DCAA must decide whether to comply with each request within 10 working days of receiving it and must disclose all records requested, unless there is a specific statutory reason for exempting the information from disclosure. To gather and review the information for these FOIA requests may involve DCAA staff in every office and division.

What is the rationale behind the Act, and how can the task of fulfilling the obligations imposed by it be made somewhat easier? How do you find the records that are subject to a request and how do you determine what records or what portions of them should be withheld?

This guide has been prepared to answer these questions. It is designed for both those employees who come in contact with the FOIA infrequently and those who have direct FOIA responsibilities as part of their normal day-to-day duties.

In general, each chapter and section of the guide is organized to highlight the general principles first, followed by more detailed information and exceptions to these principles. The guide is being issued in looseleaf form for ease of updating as case law or DCAA policies or procedures change. Should you have any questions about any of the material in the guide, please contact Dave Henshall, Information and Privacy Advisor, Information Resources Management Branch (CMR), Headquarters, DCAA, (703) 274-4400.

FOR THE DIRECTOR:

John van Santen

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Assistant Director, Resources

DISTRIBUTION:
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Table of Contents

Page

CHAPTER 1 - OVERVIEW...1

Description of the Agency's Regulation........................1
Summary of the FOIA...2

CHAPTER 2 - WHAT RECORDS ARE SUBJECT TO FOIA DISCLOSURE?..........5

Highlights..5
What is an Agency Record?.....................................5
Must DCAA Possess the Record?.................................6
Must the Record Exist when Requested?.........................7
What have the Courts Ruled about Agency Records?..............7
How do Personal Records become Agency Records?................7
What Kinds of Records Must be Kept and for How Long?..........8

CHAPTER 3 - HOW DOES A FOIA REQUEST GET PROCESSED?...............10

Highlights...10
Where Should FOIA Requests be Sent?..........................11
Are FOIA Requests Processed like Routine Information Requests?... 11
How are FOIA Requests placed under Control?..................11
How are FOIA Requests Evaluated?.............................12
What's the Role of the Action Offices?.......................13
What are the Roles of the Technical and Administrative Staffs?.....................................15
What are the Roles of Regional Directors and Designated Senior FOIA Officials?..........................17
Who Coordinates DCAA's Responses to a FOIA Request?..........17
Should Contractor Names be Excised from FOIA Material........18 Considered Releasable?
When Part of the Record to be Released Originates Outside of DCAA, should the Requester be Routinely Advised to Contact the Originator to Obtain that Portion of the Record?...18
What is the Procedure for Handling Audit Reports Subject to the FOIA?..................................18
How are Requests for Audit Reports Without Working Papers Processed?..................................20
How are Requests for Audit Reports and Working Papers Processed that are Predecisional and Deliberative?.........21

Page

CHAPTER 4 - HOW DO AGENCIES HANDLE APPEALS TO FOIA REQUESTS? 23

- Highlights 23
- How long do Requesters have to Appeal a Denial? 23
- Can a Requester Appeal a Delay in the Initial Request? 23
- How are Appeals Processed? 23
- How long does DCAA have to Respond to an Appeal? 24
- Can a Requester Appeal a "No Record" Determination or Fee Waiver Denial? 24

CHAPTER 5 - CAN REQUESTERS APPEAL AGENCY DENIALS IN THE COURTS? 25

- Highlights 25
- When may a Requester Sue an Agency? 25
- How does a FOIA Suit Begin? 26
- What is a Vaughn Index? 26
- Is the Agency Required to Produce a Vaughn Index at the Administrative Level? 27
- Will the Courts Allow Discovery? 27
- Will the Courts Examine Agency Records in Detail? 28
- How does a Court Make its Decision? 28
- Can a Court Decision be Appealed? 28
- Can an Appeal be Made to the Supreme Court? 29
- How do the Courts Award Attorney Fees? 29
- Can the Courts Discipline an Agency Employee? 30

CHAPTER 6 - WHAT RECORDS ARE EXEMPT FROM FOIA DISCLOSURE? 31

- How is Exempt Segregated From Nonexempt Information? 31
- Highlights 31
- What have the Courts Said about Segregating Information? 32
- What is the Best Technique for Reviewing Records? 32

Exemption 1 - Classified Information 33

  - Highlights 33
  - How is Classified Information Defined? 33
  - How does DCAA Process Requests for Information Classified by Other Agencies? 34
  - How does DCAA Process Requests for Classified FBI Intelligence Information? 35
  - What is the Mosaic Approach to Classified Information? 35
  - Can the Courts Review Classified Information that's been Withheld? 36

Page

  What Happens if there's an Unauthorized Release of Classified Information? 36

Exemption 2 - Internal Rules and Practices 37

  Highlights 37
  What Internal Agency Records may be Withheld? 37

Exemption 3 - Information Exempted by Statute 39

  Highlights 39
  What kinds of Information are Exempted by Statute? 39
  Can Grand Jury Information be Withheld? 39

Exemption 4 - Proprietary Information 40

  Highlights 40
  What Types of Proprietary Information can be Withheld? 41
  What are Trade Secrets? 41
  What kinds of Commercial or Financial Information can be Withheld? 41
  What is the Impairment Theory? 42
  What is the Test for Competitive Harm? 42
  What is the Predisclosure Notification Procedure for Confidential Commercial Information? 42
  How does the Staff Respond to Requests for Records Containing Proprietary Information? 43
  Can Owners of Proprietary Information Sue DCAA to Prevent its Release? 44
  How should Proprietary Information Be Handled? 44

Exemption 5 - Predecisional Information 46

  Highlights 46
  What is Predecisional Information? 46
  Can Factual Material be Segregated? 48
  What is the Procedure for Processing Requests for Audit Reports and their Related Working Papers where the Contracting Officer has Determined the Report to be "Predecisional and Deliberative" and thereby Subject to the Deliberative Process Privilege of Exemption 5? 49
  Are Attorney Records Exempt from Withholding? 50
  Are Contract Estimates Exempt from Withholding? 50

Exemption 6 - Personal Privacy Information 51

  Highlights 51

Page

What is an Individual's Right to Privacy under the FOIA?....51
What Types of Information about Federal Employees May Be Disclosed?....52
What Types of Information about Federal Employees are Exempt from Disclosure?....53
Can Job Applications be Disclosed?....53
Can Misconduct Information about Federal Employees be Disclosed?....54
How do Agencies Decide whether to Release Misconduct Information?....56
Are Mailing Lists of Agency Employees Exempt?....56
Are Other Mailing Lists Exempt?....56
How does the Mosaic Theory Apply to Privacy?....57
What are the Processing Procedures for Requests where the Responsive Records Contain or Imply the Identity of Individuals who have been Given an Expressed Statement or Promise of Confidentiality?....57

Exemption 7 - Investigatory Records....58

Highlights....58
How are Investigatory and Law Enforcement Records Evaluated?....59
How do Agencies Protect Confidential Sources?....61
Can DCAA ever Deny the Existence of Agency Records?....63
What Steps are Necessary to Process Agency Records Subject to Exemption 7(A)?....64
Who Processes FOIA Requests for DCAA Generated Records Subject to Investigation?....65
What Steps are Necessary to Process FOIA Requests for Records Subject to Investigation?....65

Exemption 8 - Records of Financial Institutions....67

Highlight....67
Does DCAA Use this Exemption?....67

Exemption 9 - Oil and Gas Well Data....68

Highlight....68
Does DCAA Use this Exemption?....68

CHAPTER 7 - HOW ARE FEES ASSESSED FOR FOIA SEARCHES?....69

Highlights....69
Have Provisions in the Law Affected FOIA Fees?....70

Page

When can Fees be Waived?....70
How are Requesters Categorized?....70
For Whom are Fees not Charged?....72
How much are Fees?....72
Can the Scope of a Search be Negotiated with a Requester?....73
How is a FOIA Request Processed with an Inadequate Fee Declaration?....73
Is the Agency Obligated to Process Documents and Make Them Available for Viewing by the Requester without the Assessment of Fees?....74

CHAPTER 8 - HOW DOES THE FOIA AFFECT OTHER OPENNESS IN GOVERNMENT LAWS?....75

The Privacy Act of 1974....75

Highlights....75
How do the FOIA and Privacy Acts Differ?....75
What is a System of Records?....76
How does the Privacy Act Control Access to Agency Records?....76
Are Personal Records under the FOIA and the Privacy Act the Same?....77
How much Information about Individuals can Agencies Collect?....77
When can Agencies Permit Access to Personal Information?....78

Government in the Sunshine Act of 1976....78

Federal Advisory Committee Act of 1972....78

Freedom of Information Act Prohibition on Withholding Information from Congress - Transmittal of Sensitive Documents to Congress....79

Highlights....79
Can the FOIA be Used to Withhold Information from Congress?....79

APPENDICES

Appendix A - The Freedom of Information Act, 5 U.S.C. 552 and Code of Federal Regulations, 32 CFR Part 290

- Appendix B - The Privacy Act of 1974, 5 U.S.C. 552a
- Appendix C - Key Freedom of Information Act Cases
- Appendix D - Summons and Complaint with Declaration
- Appendix E - Training Opportunities
- Appendix F - Reference Material
- Appendix G - Agency Forms
  - DCAA Form 5410-3, Freedom of Information Cost Estimate Worksheet
  - DCAA Form 5410-4, Freedom of Information Case Summary
  - DCAA Form 5410-6, Freedom of Information Act Annual Report Worksheet
  - Freedom of Information Act Request Cover Sheet
- Appendix H - Boilerplate Letters and Memorandums
  - Acknowledgement of Appeal
  - Authentication of Documents
  - Commercial Use Tasking Memorandum for Cost Estimate or Full Processing
  - Denial Letter with Appeal Rights
  - Fee Waiver Denial with Judicial Review Advisory
  - Final Notice to Submitter on Predisclosure Notification
  - FOIA Status of Processing Inquiry
  - Media Request Tasking Memorandum
  - Notice of Suspension of Processing for Non Payment
  - No Records Response
  - Notice of Processing Costs Seeking Partial Prepayment
  - Other Use Tasking Memorandum
  - Other Use Tasking Memorandum for Cost Estimate or Full Processing
  - Predisclosure Notification
  - Predisclosure Notification Reminder
  - Privacy Act Response
  - Privacy Interim Response Seeking Verification of Identity
  - Privacy Act Request Tasking Memorandum
  - Publications Response with Advisory
  - Referral to Another Agency
  - Referral of Request within the Agency
  - Release of Referred Records with Fee Waiver
  - Response with Fee Assessment
  - Requester Advisory of Referral Action
  - Response Indicating Request not Reasonably Described
  - Tasking for Cost Estimate on Commercial Use Request
  - Tasking for Release Recommendation on a Referred Document
  - Tasking Memorandum for a Commercial Use Request
  - Tasking Memorandum for Release Recommendation
  - Tasking Memorandum Seeking Release Recommendation on MRDS
- Appendix I - Pro Forma Paragraphs
- Appendix J - Agency Freedom of Information and Privacy Coordinators
- Appendix K - Principles of Information

CHAPTER 1

OVERVIEW

CHAPTER 1 - OVERVIEW

The Freedom of Information Act (FOIA) was enacted in 1966 and became law on July 4, 1967. It was the first of four statutes designed to open the processes and records of the Federal government to public scrutiny.

Passage of this landmark legislation was preceded by a decade of study and hearings to pierce what was called the U.S. Government's "paper curtain." In a June 9, 1955 letter from then Congressman William Dawson, Chairman of the House Government Operations Committee, to Congressman John Moss establishing a Special Subcommittee on Government Information to investigate secrecy in government, Congressman Dawson stated:

> **An informed public makes the difference between mob rule and democratic government. If the pertinent and necessary information on governmental activities is denied the public, the result is a weakening of the democratic process and the ultimate atrophy of our form of government.**

Although Section 3 of the Administrative Procedure Act of 1946 provided that all agency records must be open for public inspection unless the agency found for good cause that the records should be held confidential, the agencies themselves decided what was "good cause." The Subcommittee found that the statute had come to be looked upon as more of a withholding statute than a disclosure statute.

In enacting the FOIA and its subsequent amendments, Congress established for the first time an effective statutory right for public access to government information. The Act provides that all records of a Federal agency must be released upon a request from any person unless the records fall within one of the nine exemptions specified in the Act; that the exemptions are to be interpreted narrowly, and that even if a record is exempt from disclosure, an agency generally has the discretion to release it anyway. In a 1978 case, the Supreme Court described the purpose of the FOIA in words similar to those used by Congressman Dawson in 1955, saying:

> **The basic purpose of the FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.**

Description of the Agency's Regulation

DCAA's regulation implementing the FOIA is set forth in Title 32 of the Code of Federal Regulations (32 CFR Part 290). The regulation discusses the procedures for requesting copies of records, the Act's exemptions, DCAA's initial determination and appeal procedures, fees, and requests for the waiver or reduction of fees.

Summary of the FOIA

The complete Act, as amended, is included in this guide in Appendix A. The main provisions are as follows:

o Any person has a right, enforceable in court, of access to federal agency records, unless those records are protected from disclosure by one of nine exemptions.

o Federal agencies must automatically disclose the following kinds of information by publication in the Federal Register:

descriptions of the agency's organization;

how, where, and from whom the public may obtain information;

the agency's rules of procedure; and

statements of general policy.

Unless these items are published in the Federal Register, a person may not be adversely affected by them unless that person has actual knowledge of their contents.

o Each agency must make available for public inspection and copying:

final opinions made in the adjudication of cases;

statements of policy that have been adopted by the agency but have not been published in the Federal Register;

administrative manuals and instructions to staff that affect members of the public; and

a record of final votes in agency proceedings.

o Federal agencies must publish a schedule of FOIA fees in the Federal Register.

o Federal agencies have 10 working days to determine whether to comply with an FOIA request for records. If an agency refuses and there is an appeal, the agency has 20 working days to respond to the appeal. These time limits may be extended under "unusual circumstances" (the need to collect records from field facilities, the need to search for or collect a voluminous amount of records, or the need to consult with another agency or another component of the same agency). If the agency does not comply within these time limits, the requester may sue the agency in court.

o There are nine specific exemptions under which an agency may withhold requested information. Exemptions (1), (3), (6), and (7)(c) are mandatory. The other six are discretionary exemptions. These include records that are summarized as follows:

(1) Specifically authorized to be kept secret in the interest of national defense or foreign policy, and are properly classified;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person that is privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency;

(6) Personnel, medical, and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information

(a) could reasonably be expected to interfere with enforcement proceedings,

(b) would deprive a person of a right to a fair trial or an impartial adjudication,

(c) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(d) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(e) would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of a law, or

(f) could reasonably be expected to endanger the life or physical safety of any individual;

(8) Related to certain reports prepared by or for an agency

responsible for regulating financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

o Any "reasonably segregable" portion of a record must be provided to any person who requests that record after exempt portions have been deleted.

o The Act may not he used to withhold information from Congress.

o Each agency must submit an annual report to Congress on its FOIA actions, including the names of all agency personnel responsible for the denial of records. Generally, office directors and regional administrators are identified as the officials denying records for which their offices are responsible.

CHAPTER 2

WHAT RECORDS ARE SUBJECT TO FOIA DISCLOSURE?

CHAPTER 2 - WHAT RECORDS ARE SUBJECT TO FOIA DISCLOSURE?

Highlights

- Agency records refer to all information, including computer records, in the possession and control of DCAA that were created or obtained for an agency purpose.
- Records received from applicants, contractors, and others pertaining to DCAA's regulatory functions are also agency records.
- An individuals' personal records, defined as follows, are not subject to an FOIA request:

  > Records in the possession of DCAA personnel that have not been circulated, were not required to be created or retained by the Agency, and can be retained or discarded at the author's sole discretion, or records of a personal nature that are not associated with any Government business.

- All agency records within the scope of the request must be identified in response to a FOIA request. The staff does not have the discretion to decide what may be important or unimportant to a requester.
- The mere fact that a record must be identified does not mean that it must be made public; it may still be withheld under one or more of the nine FOIA exemptions that may be applicable.
- Good records management practices require that DCAA's official files and individual staff files be reviewed periodically to remove obsolete and unwanted material.

What is an Agency Record?

The FOIA applies only to agency records. Although the Act does not define the word "record," most agencies have adopted a definition similar to that appearing in the Federal Records Act. DCAA defines "records" in 32 CFR part 290 as follows:

The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in DCAA's possession and control at the time the FOIA request is made.

The following are not included within the definition of the word "record":

> Objects or articles, such as structures, furniture, paintings,

sculpture, three-dimensional models, vehicles and equipment, whatever their historical value, or value as evidence.

Administrative tools by which records are created, stored, and retrieved, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of a DCAA activity. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium are not Agency records. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software.) Exceptions to this position are outlined below.

In some instances, computer software may have to be treated as an Agency record and processed under the FOIA. These situations are rare, and shall be treated on a case-by-case basis. Examples of when computer software may have to be treated as an Agency record are:

> When the data is embedded within the software and cannot be extracted without the software. In this situation, both the data and the software must be reviewed for release or denial under the FOIA.
>
> Where the software itself reveals information about organizations, policies, functions, decisions, or procedures of a DCAA activity, such as computer models used to forecast budget outlays, calculate retirement system costs, or optimization models on travel costs.

Anything that is not a tangible or documentary record, such as an individuals memory or oral communication.

Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

Information stored within a computer for which there is no existing computer program for retrieval of the requested information.

A record must exist and be controlled by the Agency at the time of the request to be subject the Act. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request.

Must DCAA Possess the Record?

To be subject to the FOIA under DCAA's regulations, a record has to be under the possession and control of the agency pursuant to federal law. In other words, it has to be in the physical possession and control of DCAA for an agency purpose.

Must the Record Exist when Requested?

The FOIA applies only to records in existence at the time a FOIA request is received by the Agency. If the records have already been destroyed, or the record does not yet exist or does not exist in the form requested, there is no obligation to recreate an old record or to create a new record to satisfy a FOIA request. With respect to information contained in a computer system, there is also no obligation under the FOIA to write a special program to obtain a printout of the information in a format desired by the requester. On the other hand, there is no prohibition against creating a new record or writing a special program if it can be done more easily than searching for the original records and deleting large amounts of exempt material.

What Have the Courts Ruled about Agency Records?

The Supreme Court has observed that through the enactment of the FOIA, Congress sought to open agency action to the light of public scrutiny by requiring agencies to adhere to a general philosophy of full agency disclosure. Flowing from this concept, the Supreme Court has held that there are two prerequisites that must be met before a record is considered an agency record. First, the agency must either create or obtain the requested materials. In this regard, the Court noted that in performing their official duties, agencies routinely avail themselves of studies, trade journal reports, and other materials produced outside the agencies both by private and govermental organizations. Therefore, to restrict the term "agency records" to materials generated internally would frustrate Congress' desire to put within public reach the information available to an agency in its decisionmaking processes.

The second prerequisite is that the agency must be in control of the requested materials at the time the FOIA request is made. By control, the Court stated that it meant that the materials came into the agency's possession in the legitimate conduct of its official duties. Along this line, the Court specifically rejected the contention that the outside materials had to have been prepared to be relied upon in the agency decisionmaking.

How do Personal Records become Agency Records?

In some cases, personal records can become agency records at a later date:

- o If the records are shown to another member of the staff. (DCAA then assumes that the records are being used to transmit official agency information.)
- o If the records are filed in branch or office files as opposed to someone's personal files.
- o If the records are commingled with agency records as part of an ongoing working file.
- o If the records are used as the basis of taking an agency action.

On the last point, courts have held that a supervisor's notes of discussions with employees remain the personal property of the supervisor, unless they are filed under the employee's name or other identifier, and thus become subject to the provisions of the Privacy Act. Even when they are personal, they cannot be used to "ambush" an employee. (In a 1982 case, a supervisor gave an employee satisfactory performance ratings for two years while simultaneously collecting adverse data. These data were later used as the bases for firing the employee. The court said that the personal notes lacked the timeliness of incorporation into agency records necessary to assure fairness under the Privacy Act. "Such an approach to the maintaining of records on employee job performance is not consistent with the Privacy Act." Additionally, once the notes are used by the agency to make a decision concerning an individuals' employment status, the notes become subject to the provisions of the Freedom of Information Act.)

Saying that, three caveats must be mentioned. First, it is contrary to Federal law to remove from DCAA files the record copy of a record except in accordance with the Records Disposal Act. If such a record is removed and later located, it would still be an Agency record. Second, the intent in removing the records cannot be to avoid the FOIA when the staff person has every intent to bring the records back when later needed for an Agency purpose. Third, an employee should not remove Agency records for non-Agency purposes where the records have not been made public by the Agency and which DCAA must protect from public disclosure.

What Kinds of Records Must be Kept and for How Long?

Under the Federal Records Act, each agency is required to keep records of the agency's organization, decisions, procedures, and practices. Under the Records Disposal Act administered by the General Services Administration (GSA), GSA has provided schedules by which various types of records common to most Federal agencies may be retired or destroyed after a specified number of years. DCAA's records schedule is contained in DCAAM 5015.1, Files Maintenance and Disposition Schedule. The official record copy of records listed in the schedule may not be destroyed until the period specified has elapsed, and in some cases the records must first be offered to the Archivist of the United States for permanent retention.

The GSA and DCAA records disposal schedules have a category of records referred to as "non-record material." These are records which are retained by individuals for convenience or reference, and which may be destroyed when the records are no longer needed or when their purpose has been served. Examples of non-record material are:

- extra copies of official records
- drafts
- work papers
- computations

- o informal notes

At the time a FOIA request is received by the Agency, all agency records, both official record copies and non-record material, become subject to the request. No records may be destroyed after a FOIA request is received until copies have been provided in response to the request. While any of these records may be withheld from public disclosure if they fall within one of the nine exemptions specified in the FOIA, the records must be addressed in the response letter.

From a records management standpoint and to avoid unnecessary staff time searching for records, the staff should cull official office files and individual staff files periodically to remove obsolete and unwanted material. Recognizing that many people tend to be savers, some offices may deal with this problem by establishing a policy that all records required to substantiate an office decision or action are to be kept in the office's official files, including both record and non-record material. The advantage of this procedure, if diligently administered, is that it provides a discrete file of all relevant records. It also assures that management is aware of all staff views that could be addressed in a hearing or other public forum.

The disadvantages are that such a procedure is difficult to administer and, even if put in practice, it will always be necessary to search both official and individual staff files in response to FOIA requests.

CHAPTER 3

HOW DOES A FOIA REQUEST GET PROCESSED?

CHAPTER 3 - HOW DOES A FOIA REQUEST GET PROCESSED?

Highlights

- Requesters must submit FOIA requests in writing. DCAA does not accept oral and telephone requests.
- DCAA staff should forward any FOIA request received directly, immediately to their FOIA Coordinator as indicated at Appendix J. Facsimile transmission should be used if a request is received at a location other than where the FOIA Coordinator works.
- The Act applies only to requests for existing records. A request for information which has yet to be developed cannot be released or denied under the FOIA. The proper response in this situation is a "no record" determination.
- DCAA has 10 working days to make disclosure determinations on each FOIA request.
- The FOIA Coordinator sends FOIA requests to the action office which might reasonably be expected to have copies of records subject to the request.
- Action officers having questions about the scope or meaning of a FOIA request should contact their FOIA Coordinator immediately. A conference call can be held with the requester to resolve any open issues.
- All agency records subject to a FOIA request must be identified. This means that all staff members familiar with the subject matter of the request must be contacted and all files expected to contain records must be searched.
- The action office responsible for records requested must identify any information in those records which should be withheld under the FOIA, and must state why the information is being withheld.
- Records must be reviewed on a line-by-line basis. Entire pages or paragraphs cannot be withheld if only a few words or phrases are exempt from disclosure.
- All records requested should be provided to the FOIA Coordinator, who will prepare a coordinated response for the Agency. The Regional Director or Chief, Information Resources Management Branch, Headquarters, DCAA, denying records will be named in the response as a denying official.
- A requester may appeal to the Assistant Director, Resources, Headquarters, DCAA if any records have been denied under the FOIA. A "no record" determination and denial of a request for a fee waiver may also be appealed.

Where should FOIA Requests be Sent?

Under DCAA regulations, FOIA requests must be submitted in writing to the FOIA Coordinator. If any other member of the staff receives an FOIA request, he or she should send it immediately to the FOIA Coordinator.

Are FOIA Requests Processed like Routine Information Requests?

DCAA receives many requests for information; however, only requests which specify that they are FOIA requests are processed as such. Requests which do not specify the FOIA are handled in the normal course of business by the office receiving them. When a FOIA request is received by the FOIA Coordinator, it is logged in and given a sequential FOIA number. After the request is logged, DCAA has 10 working days in which to respond to the request. Logging the request also commences the period during which records subject to the request may not be destroyed by the Agency.

How are FOIA Requests placed under Control?

Each request received within the Agency should be placed under administrative control to ensure processing is in compliance with the time limits imposed by the Act. Upon receipt, a request should be time and date stamped by the FOIA Coordinator. All subsequent correspondence received from the requester or related to the request should also be time and date stamped.

Agency control is centrally maintained by the Information and Privacy Advisor, Information Resources Management Branch (CMR) , Headquarters, DCAA. This facilitates the production of the Annual Freedom of Information Act Report to Congress which is developed by this office. The centralization further relieves the regional offices of the annual reporting requirement.

When a request is received by a FOIA Coordinator, the FOIA Coordinator should call CMR, (703) 274-4400, for a sequential control number. The sequential control number (e.g. I-90-298-H) should be entered in the upper right hand corner of the original request. The suspense control date (e.g. 10/12/90) is entered on the next line directly below the sequential control number. Normally this information should be entered on the label of the case file folder in addition to the name of the requester and records requested as follows:

I-90-014-H Jones, Langley, and McRoberts
Sprocket Audit Reports and Working Papers
Suspense: 10/12/90

A copy of the original request should be forwarded to CMR using pouch mail once it is placed under control. DCAA Form 5410-4, which summarizes FOIA activity, is to be also forwarded upon completion of processing. This form is used as a feeder document to the annual report.

The sequential numbering system used to control FOIA cases is designated by various alpha and numeric codes and is divided into four parts separated by hyphens.

- o The first digit identifies the type of request:

  I for initial requests (signed by Chief, Information Resources Management Branch in Headquarters and the Regional Directors);

  A for Appeals (processed only by Headquarters and signed by the Assistant Director, Resources); and

  L for Litigation (Office of Counsel, Defense Legal Services, DCAA Headquarters and Department of Justice has the action; however, HQ/CMR is responsible for reporting requirements).

- o The second position represents the year the request was received for processing by the Agency (e.g. 90 for 1990).

- o In the third section, the sequential number is entered (e.g. 298).

- o Finally, the processing office is designated by one of the following symbols :

  H - HQS; E - Eastern; C - Central; M - Mid-Atlantic;
  N - Northeastern; S - Southwestern; W - Western

If it is necessary for one region to refer a FOIA request to another region, the alpha indicator will reflect both offices, e.g., H/E indicates the request was received in Headquarters and referred to Eastern.

How are FOIA Requests Evaluated?

The request is reviewed by the FOIA Coordinator to determine a number of factors:

- o Is the request for records or for information that would have to be specially developed? If it is a request for information that must be developed, the FOIA Coordinator will notify the requester that there is no record. The letter may be forwarded then to the appropriate DCAA office for response.

- o Is the request for records which DCAA might reasonably be expected to have, or does the request deal with a subject that is primarily within the jurisdiction of another Federal agency?

- o Is the request understandable and reasonable in scope? If it is not clear what the requester wants, or if the request is excessively broad in scope, the FOIA Coordinator may call the requester to obtain specifics or to limit the scope of the request. Frequently, requesters will have only a vague idea of what they want or the type of records available in DCAA files. In those cases it is normally helpful to set up a conference call between the requester, the FOIA

Coordinator, and the action office to discuss DCAA's files and procedures, and to seek ways to clarify the scope of the request.

o Does the request deal with specific records which have been requested before or which can be readily retrieved by the action office? If the records have been requested before, and are readily available, such as with requests to Headquarters for Memorandums for Regional Directors (MRDs), the FOIA Coordinator will respond to the requests directly. At present, approximately one quarter of DCAA's FOIA requests are handled in this way.

If the FOIA Coordinator cannot respond to a request immediately, copies of the request will be forwarded by memorandum to the office which might reasonably be expected to have the records requested. The memorandum will request a response within eight working days. The memorandum will also advise offices that the FOIA Coordinator should be kept informed of any problems or delays incurred in processing the request.

What's the Role of the Action Office?

When the FOIA Coordinator forwards a FOIA request to an action office, it should be distributed immediately to the divisions, branches, sections, or persons who have or may have the records that the requester is seeking, or who may be knowledgeable about the subject matter of the request. Offices that hold daily meetings with senior staff find the meetings an excellent opportunity to discuss any new FOIA requests, since those attending are most knowledgeable about who participated in various activities. It is also the action office's responsibility to assure that any retired records which may be subject to the request are also reviewed.

If the FOIA Coordinator has neglected to forward a FOIA request to an office which may have records subject to the request, the action office should notify the FOIA Coordinator immediately. If known, the name of a staff member in another office who may have records or information concerning the request should be sent to the FOIA Coordinator. Because of the changes in personnel, action offices in other offices may not be aware of the staff's previous work assignments.

Action offices should telephone the FOIA Coordinator as soon as possible, if (a) the request is ambiguous; or (b) if the technical staff involved in the search believes the scope should be clarified or narrowed. As noted previously, the FOIA Coordinator can arrange a conference call with the requester to clarify the request so that it may be possible to save time that would otherwise be wasted in unnecessary searching. In the case of a lengthy search or one involving a voluminous number of records, the requester may have to agree beforehand to pay fees for searching, reviewing for release, and for copying records.

The action office should set a deadline--normally three to five working days--for their staff to make their submissions. This deadline should allow time to obtain necessary concurrences, so that a punctual submission to the

FOIA Coordinator will be made. If the deadline cannot be met, the action office should notify the FOIA Coordinator as soon as possible.

If the action office knows that it has originated no records subject to the request, and has received no records from sources outside DCAA, it need not search for records. That is, no search is necessary if the action office knows that it has no records. Again, however, if they have the name of a specific individual to contact, the action office must forward that information to the FOIA Coordinator.

The names of the action offices's staff members who originate or receive records must be provided to the FOIA Coordinator. When the staff has submitted the results of its search, the action office should prepare a memorandum to the FOIA Coordinator listing all the records by categories and in chronological order, oldest record on top, as follows:

- Records to be released;
- Records withheld in part;
- Records withheld in full; and
- Records from other sources (other DCAA offices or other agencies to whom the FOIA Coordinator should refer the records for review and disclosure determinations).

In reviewing the records submitted by the action office, the FOIA Coordinator should look for obvious omissions and question the action office as to the whereabouts of any missing records. For example, if a memorandum refers to an incoming letter or memorandum, has that record been produced? Are listed enclosures attached?

A copy of each record listed should be enclosed, or an explanation should be provided as to why it is not enclosed. When the record is not enclosed, it must be specifically identified by date, subject, and author. (Although one office is not required to search for records originated by another office, if such records are found they should be identified to the FOIA Coordinator in order to assure that no records are overlooked.)

The FOIA Coordinator should ensure that all records or portions of records withheld are clearly marked, and that the reason they are withheld is noted in the memorandum and appendices (i.e., the list of documents). Recommended withholdings by different members of the staff must be consistent and in accordance with office policy. If recommended withholdings are suspected to be incorrect, they should be discussed immediately with the issuing office.

Action offices should obtain all required concurrences in their own office. The Office Director, or Designated Senior Official if the function has been delegated, is responsible for making the office recommendation as to what is to be released or withheld.

The Office Director or the Designated Senior Official will look to the FOIA coordinator as the FOIA expert, and will seek his or her advice. FOIA Coordinators in turn may direct questions to the Information and Privacy

Advisor, Headquarters, DCAA. The action office's job is to identify correctly all responsive records while the FOIA Coordinator is required to protect the Agency from releasing information that should be withheld and denying information that should be released.

What are the Roles of the Technical and Administrative Staffs?

If there are any questions concerning the scope of a request the action office should arrange to clarify it with the FOIA Coordinator. Once any questions concerning the scope of the request are resolved, the search for records should proceed immediately.

The FOIA Coordinator will specify the date by which the search and review must be completed. If it's impossible to meet the deadline because of significant work conflicts or for other valid reasons, the FOIA Coordinator should be notified immediately. Then an estimate of the date by which the search is expected to be completed should be made and, if necessary, scheduling priorities should be resolved with higher level management.

All Agency records that are subject to the request must be identified. Under the FOIA, the Agency does not have the discretion to decide whether or not a record is significant or insignificant, important or trivial. If it is an Agency record and it falls within the scope of the request, it must be submitted and dealt with in the response letter.

The test of the legal adequacy of a FOIA record search is one that includes all records which a person, who is familiar with the subject matter of the request, can be expected to locate in a reasonable amount of time. A good faith effort is required to meet this test. This means that:

- All persons knowledgeable about the subject of the request and likely to have records are contacted.

- The search for records includes all files (to include computer) that are likely to have records responsive to the request.

The adequacy of an Agency's search is measured by the standard of reasonableness, and is dependent upon the circumstances of the case.

Normally, the action office need only look for records prepared up to the date of the request. (The FOIA does not require that a request be open-ended for records yet to be created or those of a continuing nature). However, if there is an extended delay in responding to the request, the FOIA Coordinator should be informed so that it can assign a new due date.

If personal notes are intermingled with Agency records, there is a presumption that they are Agency records and are subject to the request.

The more specific the request, the more specific the search should be. Thus, if the request is only for a specified report, other information such as drafts, background material, or other records, need not be furnished, even though the requester may find them useful.

A record does not have to comply in every detail with a request to satisfy the request. For example, if a requester asks for certain information in alphabetical order, and the staff organizes it in some other sequence, it is not necessary to alphabetize it. Similarly, the Agency does not have to produce a computer printout in the exact format specified by the requester if a new program has to be written to put it in that format. The staff need only furnish those existing records which pertain to the subject of the request.

The issue of whether records are actually created or merely extracted, with respect to electronic records, from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, activities should apply a standard of reasonableness. In other words, if the capability exists to respond to the request, and the effort would be a business as usual approach, then the request should be processed.

A record may not be destroyed once a FOIA request is received, even though it could have been destroyed earlier under the terms of the Federal Records Act and DCAA records disposal schedule (DCAAM 5015.1). Once a FOIA request covering that record has been received, it must be released unless it can be exempted under one of the FOIA exemptions.

Special categories of records:

- o Records originated by another DCAA office - These should be identified in a listing separate from records originated by the action office, and copies forwarded to the FOIA Coordinator. The action office need not search for records from other offices. Thus, the action office, knowing it would otherwise have a negative reply to the request, may ignore searching for the records received from other DCAA offices. The FOIA Coordinator should be informed, however, and provided the name of the individual or Branch in another office who should be contacted, if known.

- o Records received from other agencies - Normally, these are referred back to those agencies for direct response to the requester. The requester should be advised in writing by the FOIA Coordinator of such a referral. If such information is contained in a DCAA record, the FOIA Coordinator will consult the other agency as to its availability. DCAA will then respond to the request for both agencies or refer the document to the originating agency.

- o Draft records - Drafts still in DCAA's possession are subject to the FOIA. They must be included in a submission to the FOIA Coordinator even though they have been superseded by subsequent drafts or final records.

When all the records subject to the request have been assembled, the action office staff should review them to identify all sensitive records and to recommend what records or portions thereof should be withheld.

The information to be withheld under one of the FOIA exemptions must be segregated from those parts of a record which can be released. Therefore, those portions to be withheld from public disclosure should be bracketed in red (preferably with a red pencil that can be whited out if necessary). The complete record, exempt and nonexempt, must be furnished to the FOIA Coordinator for review and concurrence when information is to be withheld.

What are the Roles of Regional Directors and Designated Senior Officials?

The Office Director is responsible for recommending whether to disclose or withhold, in whole or in part, each Agency record identified in that office.

The Designated Senior Official (e.g. HPSE or Regional Director) is responsible for ensuring that the office meets its obligations under the FOIA.

FOIA exemptions are, for the most part, discretionary. Meaning that if there is no harm to the Government or any member of the public, then the record should be released. For example, a predecisional record need not be withheld merely because it might be exempt under Exemption 5. Records must be reviewed for withholding on a line-by-line basis. Entire pages or paragraphs cannot be withheld if only a few words are legally withholdable.

Care must be taken to exercise discretionary release of otherwise exempt records. As an example, Exemptions 1 and 3 have no discretionary latitude and Exemptions 4, 6 and 7(C) may have none after the results of predisclosure notification, Exemption 4, or balancing tests (balancing the public's right to disclosure against the individuals right to privacy), Exemption 6, and Exemption 7(C) are determined.

Care also should be taken to delete personal privacy information, such as birth dates, home addresses and phone numbers, and social security numbers.

The responsibility for identifying sensitive records and information belongs to the office in which the records originated or which is principally responsible for the records. Because of the volume of records involved, the FOIA Coordinator's review is limited to determining if information proposed to be withheld is consistent with Agency regulation and policy. Therefore, it is very important that action offices conduct a general review of documents responsive to FOIA requests to ensure that all sensitive information is identified. If information is inadvertently released, it normally cannot be recalled.

Who Coordinates DCAA's Response to a FOIA Request?

After a response has been received from each of the offices to which an FOIA request was sent, the FOIA Coordinator will prepare a coordinated Agency response to the request. If the request involves a significant number of records, or if the responses from some offices are delayed, the FOIA

Coordinator will prepare a partial response, or a series of partial responses, depending upon the situation. Each record released or denied is identified on an appendix to the response. (In cases involving an on-going investigation, records are identified as a group rather than specifically identified in order not to disclose the focus of the investigation or allow those being investigated to hide or destroy potential evidence).

If records are denied, the applicable FOIA exemption(s) for the denial are specified. The response also names the denying official who is the head of the particular office involved (e.g. Regional Director). The letter also informs the requester that any denial may be appealed within 60 calendar days to the Assistant Director, Resources, Headquarters, DCAA. Any records denied by DCAA must, under DCAA's records disposal schedules, be retained for a period of six years after denial of the initial request or, if there was an appeal, six years after denial of the appeal. (See DCAAM 5015.1, series 502.5 and 502.6 respectively).

Should Contractor Names be Excised from "FOIA Material" Considered Releasable?

Contractor names are not considered exempt information per se. To be withheld or deleted from a document, the name must meet the test for withholding under one of the nine exemptions. The most likely exemptions to be considered are Exemption 4 and Exemption 5. However, in regard to Exemption 4, the name of a contractor does not constitute proprietary or financial information.

When Part of the Record to be Released Originates Outside of DCAA, should the Requester be Routinely Advised to Contact the Originator to Obtain that Portion of the Record?

The requester should not be "referred" to another agency for material which is considered part of a DCAA record (e.g. enclosure to an MRD) and the information is clearly releasable. If a release determination cannot be established during review by the action office, the record may be referred to the originator for processing, after coordination with the originator.

Essentially, when DCAA locates records responsive to a request which were generated by another Federal agency, the standard procedure had been to "automatically" refer either the record or the requester to the originating agency for processing. The FOIA, however, not only gives agencies the authority to make a release determination on any record in the possession and control of the Agency, but compels them to do so. In this light, DCAA offices should consider externally generated records. (Note: Control of the record means that the materials came into DCAA's possession in the legitimate conduct of its official duties).

What is the Procedure For Handling Audit Reports Subject to the FOIA?

The purpose of this section is to standardize Agency processing procedures for handling audit reports, solicited under the Freedom of Information Act, whose release is dependent upon the consent of the receiving DoD contracting officer.

The compelling reason for formalizing procedures for processing requests of this type is the literal dependency the disposition of the audit report has on the related working papers maintained by the Agency. Further, given that no DCAA decision on the "working papers" may be consummated until the releasability of the audit report is formally determined, the management of the affected referral is often significantly impaired as to delay processing for an indefinite period of time. Therefore, since the Act mandates that requests submitted under the FOIA be processed in a timely fashion, it is necessary that we take a proactive position in dealing with the respective contracting officers.

The intent of the following practice or technique is to ensure that this Agency is in full control of the request during the life cycle of the FOIA request. It further provides methods that facilitate the "consultative process" with the contracting officer by offering specific criteria which delineate responsibilities and identify DCAA actions related to the case.

The typical scenario described is one that finds the requester seeking both the audit report and working papers where the releasability of the audit report is not yet known. In accordance with the provisions of section 1-508d, DoD 5400.7-R, DoD Freedom of Information Act Program, it has been determined that "the advisory report (audit report) should be referred to the appropriate DoD contracting officer."

The specific efforts necessary to process the FOIA are as follows:

- Refer the Audit Report and FOIA request to the contracting officer's FOIA Coordinator. It is important to note that any other destination may remove the request from FOIA channels and be perceived as a routine administrative action by those not versed in the FOIA. In order to ensure proper routing, refer to MRD, 89-CMR-200, subject: Freedom of Information and Privacy Act Points of Contact. If the contracting officer's FOIA Coordinator is not listed therein, contact the next higher organizational level of the component concerned to determine the appropriate addressee.

- Send the referral registered mail, return receipt for merchandise, to the contracting officer's FOIA Coordinator. This may be accomplished by using PS Form 3811, Domestic Return Receipt (March 1988) by checking the applicable blocks under the heading "Type of Service." the Post Office will return the form in two weeks or less and it should be maintained as part of the administrative file related to the case. The heading of the referral should also reflect the handling instructions (e.g. Registered, Return Receipt Requested) on the right margin across from the addressees' address line.

- Advise the contracting officer's FOIA Coordinator that the results of their decision concerning the releasability of the audit report will be required to facilitate DCAA's determination on the related working papers. A specified timeframe should be allowed, normally 30 days, to motivate a timely response. The contracting officer's FOIA Coordinator should also be advised that if the Agency is not notified of the release determination within that specified timeframe, you will initiate an independent review of the requested records and respond directly to the requester concerning the releasability of the audit report and related working papers.

- If the contracting officer's FOIA Coordinator does not respond, conduct the review as stated above, including, where appropriate, referral of the requested information to the submitter of the information, and notify the contracting officer's FOIA Coordinator of the DCAA determination. A copy of the audit report should be provided if any portion is to be withheld. Copies of the working papers need not be provided to the FOIA Officer. **Advise the contracting officer's FOIA Coordinator that DCAA will respond directly to the requester by a specified date, normally 15 days, unless they advise to the contrary.** Absent any further communication from the contracting officer's FOIA Coordinator, respond to the requester.

- Concurrent with the implementation of the first step, advise the requester of the referral of the audit report. In addition, inform the requester that the releasability of the working papers is subject to the final determination of the contracting officer on the audit report. Also, advise the requester that pending the result of this consultative effort, the Agency is invoking the provisions of subsection (a)(6)(B)(iii) of the Freedom of Information Act, 5 U.S.C. 552, which provides for the extension of an additional ten working days to process the request.

In any event, be sure that both the requester and the contracting officer's FOIA Coordinator are fully aware of the circumstances surrounding the processing of the case. Include a DCAA point of contact for both parties and provide them with facsimile and commercial telephone number(s). Stress that it is DCAA's intent to fully comply with the provisions of the Freedom of Information Act and request their cooperation and assistance in accomplishing the objective to the mutual satisfaction of all parties involved.

How are Requests for Audit Reports without Working Papers Processed?

This section provides procedural guidance on the processing of requests submitted to the Agency for copies of audit reports without concurrent demand for related working papers. The prime motive in formulating standard processing procedures is to ensure that Agency resources are not spent in the production of records when cognizant release authority rests with another component.

Qualifying requests are those that seek "e.g. all audit reports from 198X to present related to XYZ company" and/or specifically identify the audit report(s) by number that are perceived to be on file with the Agency.

In cases where only the company name is known, FOIA Coordinators should refer to the Contractor Alpha Listing for the identification of the "R/ORG" code of the DCAA office responsible for that contractor. The first four digits of the audit report number also identifies the "R/ORG" code. The R/ORG code assigned to the DCAA activity may be verified by referring to DCAAP 5100.1, Directory of DCAA Offices.

Upon identification of the responsible DCAA activity, FOIA Coordinators should telephonically ascertain the identity of the contracting officer. This is particularly important with the many reorganizations affecting DoD contracting activities and the related realignment of functions.

FOIA Coordinators should then refer the request directly to the Contracting Officer's Freedom of Information Act Coordinator and inform the requester accordingly. Requesters should be provided with a brief explanation of DCAA's role in the audit report and its' intended purpose. They should also be advised that section 1-508d of DoD 5400.7-R, DoD Freedom of Information Act Program (32 CFR 286.7(i)(4)) requires that these advisory reports (audit reports) be referred to the appropriate contracting office for release determination.

Requests for audit reports generated for non-DoD agencies should be treated as requests for DCAA records since the DoD FOIA regulation does not address them. Moreover, the theory underlying referral to another component, i.e. DoD is one agency and can determine which of its activities will respond to a FOIA request, is not applicable to this case. However, this does not preclude the coordination of such actions with the non-DoD agency.

How are Requests for Audit Reports and Working Papers Processed that are Predecisional and Deliberative?

This provides procedural guidance concerning the processing of requests for audit reports and their related working papers where the contracting officer has determined the report to be "predecisional and deliberative" and thereby subject to the deliberative process privilege of Exemption 5 of the Freedom of Information Act.

The typical scenario has the Agency formally coordinating with the contracting officer as part of the consultative process concerning the releasability of an audit report requested under the Act. As a result, the contracting officer's response advises that the audit report is as of yet predecisional and should be withheld from public disclosure until such time that the deliberative process has been completed. Often the contracting officer will offer a general time frame within which the final decision will be rendered concerning the opinions and recommendations contained in the report. As a side consideration, the record may also be potentially exempt under the provisions of Exemption 4 of the Act which provides for the withholding of commercial and financial information, obtained from a person, that is privileged or confidential.

Given the circumstances provided above, the portion of the request seeking the audit report should be referred to the contracting officer's Freedom of Information Act office for their release determination and direct response to the requester. The referral should also advise that DCAA will respond to the requester concerning the working papers and will withhold the responsive records under Exemption 5 of the Freedom of Information as a result of the initial consultative effort. Again, some portions may be withheld under Exemption 4 which should be invoked if applicable.

FOIA Coordinators should provide a copy of their response to the requester to the contracting officer's Freedom of Information Act office. The response should be very explanative and should normally detail the purpose of the audit report (advice and recommendations prepared for the contracting officer, the report is the property of the contracting officer, etc...), why Exemption 5 was invoked (to protect the decisionmaking process of the contracting official, etc...), offer general information as to when the final decision may be rendered, advise concerning statutory appeal rights, and finally, elaborate on your willingness to process a future request at such time that the audit report is no longer predecisional.

CHAPTER 4

HOW DO AGENCIES HANDLE APPEALS TO FOIA REQUESTS?

CHAPTER 4 - HOW DO AGENCIES HANDLE APPEALS TO FOIA REQUESTS

Highlights

o If DCAA initially denies a request for records, the requestor has the right to appeal that decision to DCAA and, if denied on appeal, to seek a judicial review of the denial in a Federal District Court.

o When an appeal is received, the Agency must reconsider its decision to assure that the records denied are still legally withholdable and should continue to be withheld. At this time, new exemptions may be cited or previous ones disregarded.

Normally, DCAA must respond to a FOIA appeal within 20 working days.

How long do Requesters have to Appeal a Denial?

A requester has the right to appeal the denial of records, or the denial of a request for waiver, of fees, within 60 calendar days of receiving DCAA's denial, 32 CFR 290.7 and DCAA's regulation 5410.8. All appeals are forwarded to the Assistant Director, Resources, Headquarters, DCAA as the central DCAA control point, where they are assigned a sequential number for processing.

Can a Requestor Appeal a Delay in the Initial Request?

A requester may appeal DCAA's lack of a timely response to an initial request. In that case, the initial request and the appeal are processed concurrently. If any records are denied, the requester is given new appeal rights.

How are Appeals Processed?

The following procedures apply to the processing of appeals when DCAA denies records in response to an initial FOIA request.

o The appeal is sent to the Assistant Director, Resources where the Information and Privacy Advisor date marks the appeal letter and assigns it a sequential appeal number (e.g. A-90-012-N, the first position letter "A", designating appeal, in place of the original symbol "I" which represents initial requests).

o The Information and Privacy Advisor will review the records denied and consider any new information presented in the appeal, and make a recommendation as to whether the records, in whole or part, should continue to be withheld from public disclosure. This reviewing official will consider (1) arguments presented in the appeal letter, (2) changes in circumstances because of the passage of time, and (3) whether releasable information is scrupulously segregated from information that is not releasable.

o The Information and Privacy Advisor will submit determinations along with a copy of the records to the Office of General Counsel, which will review the recommendation to assure its adequacy and identify any issues they should address.

o The Office of General Counsel will review the information denied if applicable to assure that the denial is legally correct. If the appeal is denied, the response will include specific information regarding the basis for the denial and will advise the requester of his/her right to seek judicial review under 5 U.S.C. 552(a)(4)(B) and 32 CFR 290.7.

How long does DCAA have to Respond to an Appeal?

All issues on appeals should be resolved by the 15th working day after the appeal is received unless it is necessary to consult with another agency or to obtain a company's review of proprietary information. Thereafter, the appellate authority will prepare DCAA's approval or denial of the appeal for the signature of the Assistant Director, Resources. If the request is denied, the requester will be informed that a judicial review of the denial is available in the Federal district court in which the requester resides, has his or her principal place of business, where the agency records are located, or in the District of Columbia.

Unless there are extenuating circumstances, DCAA's response should be signed and mailed by the 20th working day after the appeal was received.

Under DCAA's records disposal schedule, FOIA appeals and records denied under any appeals are to be maintained by the Agency for six years from the date of the response.

Can a Requester Appeal a "No Record" Determination or Fee Waiver Denial?

The requester must be given the opportunity to challenge the adequacy of the Agency's search under the appellate process. All "no record" responses shall provide an adequate statement offering appeal rights in accordance with established administrative appeal procedures. An example of a suitable response is as follows:

> After a thorough search of Agency records, we have determined that we have no records responsive to your request. Should you disagree with the finding cited above, you may appeal in writing within 60 calendar days from the date of this letter to Mr. John van Santen, Assistant Director, Resources, Cameron Station, Alexandria, Virginia 22304-6178.

In the event of a denial of a fee waiver request, the requester must be advised of appeal rights available as outlined above.

CHAPTER 5

CAN REQUESTERS APPEAL AGENCY DENIALS IN THE COURT?

CHAPTER 5 - CAN REQUESTERS APPEAL AGENCY DENIALS IN THE COURTS?

Highlights

- An individual may sue an agency under the FOIA in a U.S. District Court if the agency:

  withholds requested records or portions thereof,
  denies a request for waiver of fees, or
  fails to respond within the statutory time limits.

- FOIA litigation is handled by the Office of General Counsel (DL), working with the Department of Justice.

  In defending against FOIA suits, Agency staff involved in searching for and reviewing documents may be requested to prepare, under oath, detailed affidavits regarding their actions in processing a request or why they believe specific documents are exempt from public disclosure.

- Agency staff may also be subject to written interrogatories or oral depositions, which may subsequently be used during the course of legal proceedings.

- A Vaughn Index, which is an itemized description of each document withheld, the applicable FOIA exemption, and the bases for asserting the exemption, must normally be prepared by the staff in each FOIA case.

- Courts may examine agency documents in camera, meaning in private, to verify agency claims that the records are being validly withheld.

- If the plaintiff (requester) "substantially prevails" in a FOIA suit against the Agency, the U.S. Government may be required to pay reasonable attorney fees and costs for the plaintiff.

- A court has the authority under the FOIA to refer matters for disciplinary action to the Special Counsel of the Merit Systems Protection Board if it finds that "agency personnel acted arbitrarily or capriciously with respect to the withholding."

When may a Requester Sue an Agency?

The FOIA, 5 U.S.C. 552 provides that if a FOIA request is denied on appeal, the requester may seek review in a U.S. District Court in which:

the requester resides, or
has his principal place of business, or
the records are situated, or
in the District of Columbia.

Normally, before going to court, persons must exhaust their administrative remedies; that is, there must be a final decision denying the documents by the Agency. However, the FOIA provides that if the Agency does not respond to an FOIA request within the statutory time limits (normally 10 working days for an initial request and 20 working days for an appeal), the requester may treat such delay as a denial of the request and may immediately file suit in a District Court. In practice, persons who file FOIA requests with DCAA seldom go directly to court even if the Agency is tardy in responding to the request. There are reasons for this. First, DCAA keeps the requester informed periodically regarding the status of the request. Second, it is unlikely that anything would be gained by filing suit early. In Open America v. Watergate Special Prosecution Force, the court held that an agency is deemed to be in compliance with the FOIA if it is exercising good faith and "due diligence" by processing requests in the order in which they are received, absent a demonstration of "exceptional need or urgency" by the requester. Under this commonly accepted approach, the courts get involved immediately only in cases in which an agency is not exercising "due diligence" with respect to an individual request or is "lax overall in meeting its obligations under the Act with all available resources," or when the requester can show a genuine need for having the request processed out of turn.

How does a FOIA Suit Begin?

A FOIA suit against an agency begins with the filing of a Summons and Compliant, usually by the requester's attorney, in a U.S. District Court. It sets forth the parties involved, the nature of the action, the basis for the court's jurisdiction, the factual bases of the suit, including the records requested, correspondence between the parties, and the records denied by the agency; it also alleges that such withholding by the agency is contrary to law and requests that the court order the agency to make the records immediately available. Frequently, the compliant will also request that the court award the plaintiff reasonable attorney's fees against the government. A typical summons and complaint is shown in Appendix D.

After receiving a copy of the Summons and Complaint, the agency has 30 days to respond. The response sets forth in broad terms the agency's reaction to the compliant, and attempts to narrow those items at issue in the suit.

DCAA's responsibility for action on a FOIA suit is handled by an attorney in the Office of General Counsel. The attorney forwards copies of the summons and complaint to the Information and Privacy Advisor, obtains a copy of the file on the processing of the request, including copies of any withheld documents, and consults with the staff of those offices responsible for the documents withheld in preparing an answer to the compliant. The answer to the complaint is signed by an attorney in the Department of Justice, which acts as the Government's lawyers.

What is a Vaughn Index?

The FOIA establishes a presumption that all agency records should be made available to the public, and the burden is upon the agency to overcome this presumption and substain its decision to withhold records. To meet this burden of proof for information withheld, agencies must prepare a Vaughn Index, which is an itemized list describing each document or portion of a document withheld, and asserting the basis for the exception. The Vaughn Index is based on a case in the D.C. Circuit of the same name. The preparation of Vaughn Indexes and supporting affidavits are difficult, time consuming, and require the close collaboration of the technical staff most familiar with the records and the attorneys handling the case. Where large numbers of records are involved, it may be possible to prepare a Vaughn Index on only a representative sample of records rather than all records withheld. In any case, this process requires that every record withheld be reviewed to assure that it is legally withholdable and it is in the public interest to continue to withhold the document.

Is the Agency Required to Produce a Vaughn Index at the Administrative Level?

The Vaughn Index was fashioned only in connection with the adjudication of a defendant agency's motion for summary judgement in litigation and does not apply to the administrative process. There is no requirement that administrative responses to FOIA requests contain the same documents necessary in litigation. In fact, no court has held that a requester may compel production of such an index at the administrative level.

By definition, the decision in Vaughn v. Rosen, requires agencies to prepare an itemized index, correlating each withheld document (or portion) with a specific FOIA exemption and the relevant part of the agency's nondisclosure justification. The primary purpose of the index is to allow a clear explanation of why each document or portion of a document withheld is claimed to be exempt from disclosure.

The statutory language of the FOIA requires only that an agency inform the requester of the reasons for the denial of an initial request, of the name and title of each person responsible for the denial, and the right to administrative appeal. See 5 U.S.C. 552(a)(6)(i), (6)(C).

Will the Courts Allow Discovery?

Discovery, available in U.S. District Courts under the Federal Rules of Civil Procedures, is only allowed with the permission of the court, and may be either oral or written. Essentially, it is a process by which one party to a proceeding uncovers information known exclusively to or in the possession of the other party to the proceeding, and which the party requesting discovery believes are necessary in order to obtain a fair resolution of the case.

Normally in FOIA cases, the court relies on the Vaughn Index and affidavits submitted by the parties, and will not permit discovery. An agency is required by affidavits to show how the FOIA request was processed; it must identify its records management policies, procedures, and practices as it relates to the requested records and the possible locations of such records. It must identify specifically what offices and staff were contacted, and what files were searched for records subject to the request. The agency officials responsible for the search must also certify that to the best of their knowledge all records subject to the request were identified.

If legitimate questions are raised concerning the thoroughness of the search, the court can permit interrogatories or depositions of the staff. Depositions are taken under oath and in the presence of a court reporter. Opposing counsel may try to elicit information which would not otherwise be available under the FOIA. Statements made during FOIA discovery are admissible in these proceedings and may be used to challenge or discredit the testimony of DCAA staff witnesses.

Will the Courts Examine Agency Records in Detail?

The FOIA provides that a court "may examine the contents of ... agency records *in camera* to determine whether such records or any part therefore shall be withheld ..." *In camera*, meaning in private, refers to the review by a judge of records in the judge's chambers. Opposing counsel and the public are not permitted to see *in camera* filings.

In camera inspection is discretionary with the court, and generally is the exception rather than the rule since courts do not have the time to conduct detailed reviews of voluminous documents. It may, however, be used to test the agency's claims of exceptions where the Vaughn Index is too vague or the agency's claims of withholding are too sweeping.

In cases involving classified information or other national security interests, or cases involving law enforcement investigations, where it is not possible for the court to make a decision based upon the information presented in the public record, the court may also allow the government to file an *ex parte in camera* affidavit, which is not made available to opposing counsel. This process is extremely rare, and is allowed only when the government can demonstrate that the interests of the adversary process are outweighed by other crucial national security or law enforcement interests.

How does a Court Make its Decision?

In virtually all FOIA cases, the court makes its decision based upon the written records (pleadings, depositions, interrogatories, and affidavits) filed in the case. The method normally used for doing this is review by the judge of these written records submitted by the agency. The average FOIA case in the D.C. Circuit Court takes between one and one-half to two years from start to finish.

Can a Court Decision be Appealed?

The losing party in the District Court may appeal to the Court of Appeals (or appellate court). In reviewing FOIA decisions, the appellate court determines, as a matter of law, (a) whether the District Court had an adequate factual basis for its determination, and (b) assuming an adequate factual basis, whether the court's determination was clearly erroneous. If there was not an adequate factual basis, the appellate court normally remands the case back to the District Court with instructions to make additional findings.

Exemptions which were not raised by the Government in the District Court are normally considered waived and cannot be raised for the first time in the appellate court. If the government loses in the District Court, it can obtain a stay of the court's order to disclose records since disclosure of the records at that time would in essence comply with the request and make the case unnecessary.

Can an Appeal be Made to the Supreme Court?

The losing party at the appellate level may appeal to the Supreme Court of the United States. Unlike the appellate court, the Supreme Court does not have to take the case, and will do so only if the case presents an important Constitutional issue or if there is a split in decisions amoung the various Circuit Courts of Appeals. If the Supreme Court does not take the case, the decision of the Court of Appeals stands as the final decision on the matter.

How do the Courts Award Attorney Fees?

Under the FOIA, a court may assess against the government "reasonable attorney fees and other litigation cost reasonably incurred in any case...in which the complainant has substantially prevailed " at both the district court and appellate court level. In Cuneo v. Rumsfeld, the court said:

> Congress realized that too often the insurmountable barriers presented by court costs and attorney fees to the average person requesting information under the FOIA enabled the government to escape compliance with the law.

In order to "substantially prevail" and receive attorney fees and costs, the plaintiff must show that initiating and prosecuting the litigation was in process. It is not enough to show the mere fact that documents were released after the filing of the suit.

Assuming the plaintiff has substantially prevailed, the court still has discretion to decide whether fees should be awarded and, if so, the amount of the award. In making determination, courts are generally guided by four criteria:

(1) the public benefit derived from the case,
(2) the commercial benefit to the complainant,
(3) the nature of the complainant's interest in the records sought, and
(4) whether the government's withholding had a reasonable basis in law.

If a court decides to award attorney fees, the amount of the award is dependent upon the number of hours reasonably expended on this type of case multiplied by the attorney's reasonable hourly rate. Fees for paralegals working on the case are also covered. However, work done by an attorney at the administrative stage (making the initial FOIA request and handling any appeal within the agency) is not covered. In addition, attorney fees for an individual suing on his or her own behalf are not normally recoverable, except in the D.C. Circuit Court. Litigation costs (the cost of filing, depositions, reproduction, mailing, etc.) are recoverable in either case. Also, although the FOIA provides that courts may only award costs "against the United States," at least one court (the D.C. Circuit) has used Rule 39(a) of the Federal Rules of Appellate Procedures to award costs to the government when it was successful in defending an FOIA appeal.

Attorney fees and litigation costs in FOIA cases can be substantial and are paid by the Agency out of appropriated funds.

Can the Courts Discipline an Agency Employee?

Section 552(a)(4)(F) of the FOIA provides that "whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney's fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions with respect to the withholdings, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding ..."

The sanctions provision of the FOIA was made as part of the 1974 amendment to the Act. In 1976, a D.C. Court in Holly v. Acree made a finding that agency officials may have acted arbitrarily or capriciously. However, after its investigation, the Civil Service Commission, which at the time was responsible for investigating court referrals, declined to take any disciplinary action. There have been no reported cases since.

CHAPTER 6

WHAT RECORDS ARE EXEMPT FROM FOIA DISCLOSURE?

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This chapter discusses each of the nine exemptions to the FOIA, its applicability to DCAA, and the Agency's duty to segregate exempt information from nonexempt information. The nine exemptions to the FOIA which permit an agency to withhold records are listed below.

Subject

1. Classified Information 33
2. Internal Rules and Practices 37
3. Information Exempted by Statute 39
4. Proprietary Information 40
5. Predecisional Information 46
6. Personal Privacy Information 51
7. Law Enforcement Records 58
8. Records of Financial Institutions 67
9. Oil and Gas Well Data 68

How is Exempt Segregated from Nonexempt Information?

Highlights

o The FOIA requires that any reasonably segregable portion of a record be made available upon request after deletion of the exempt portions of the record.

o Except for drafts and certain legal records, all records must be reviewed on a line-by-line basis to segregate exempt from non-exempt information records.

o If, after deletion of the exempt information, the remainder is essentially unintelligible, in most cases, the entire record may be withheld from disclosure to the requester.

o Commercial use requesters may be charged for the staff time spent reviewing records for exempt information and for making the actual deletions. No other requesters can be charged for such activities for reviewing records for releasability.

o Section 552(b) of the FOIA requires that:

> Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection meaning the nine exemptions of the FOIA.

What have the Courts Said about Segregating Information?

The unintelligibility or responsiveness of the remaining non-exempt material should be resolved in favor of release.

In applying the segregation requirement of determining what is "reasonably segregable," courts in the past have evaluated a combination of what is intelligible and the extent of the burden upon an agency in segregating material. Courts also have the discretion to review the records in camera to determine if the extent of an agency's deletions is reasonable. If the exempt and nonexempt portions of a record, particularly a predecisional record, are so "inextricably intertwined," that release of segregable portions would reveal the deliberative process itself, then the entire record may be withheld.

What is the Best Technique for Reviewing Records?

- To the extent possible, a records reviewer should go through all the records at one sitting rather than spreading the review out over several days. If it is not possible to review everything at one time, the reviewer should at least scan all the records at one time after completing the review to assure that the information deleted is consistent.

- Records must be reviewed on a line-by-line basis. Entire pages or paragraphs cannot be withheld if only a sentence or a few words are exempt.

- Material to be deleted should be bracketed in red pencil and the applicable FOIA exemption should be noted in the margin. A red pen, or any pen for that matter, should not be used to mark material to be deleted since ink cannot be readily whited out or erased if changes are made.

- After the staff reviewer has completed marking the records, the Designated Senior Official for the office reviews all withheld records and material to be deleted on substantive grounds.

- Offices must forward copies of all records proposed for withholding, in whole or in part, to the FOIA Coordinator. A memorandum accompanying the records should state the rationale for withholding, and contain separate appendices listing, in date order, all records withheld in whole or in part and identifying the exemptions involved for the denials.

- The FOIA Coordinator will review the records, or portions thereof, recommended for withholding with respect to (a) compliance with past practice and procedures, (b) applicability of the claimed exemption to the records, and (c) the internal consistency of the information deleted within the records.

- Because of staff constraints, the FOIA Coordinator does not review records proposed for release. Consequently, each office must ensure that a record to be released contains no information that should be withheld, such as classified, proprietary, or personal information, or information that is contained in another record which is being withheld.

Exemption 1 - Classified Information

Highlights

- Exemption 1 permits an agency to withhold records which are (a) specifically authorized by Executive Order to be kept secret in the interest of national defense or foreign policy and (b) are properly classified pursuant to such Executive Order.

- The three classification levels are Top Secret, Secret, and Confidential.

- "Official Use Only," "Limited Use Only," "Safeguards Information," "Restricted Data," and "Formerly Restricted Data," are not classification levels, although such information may be withholdable under other FOIA exemptions.

- In processing a FOIA request, the originating office is responsible for conducting a declassification review by an authorized classifying official.

- Generally only Federal agencies that originally classify information can declassify the information. If the originating agency no longer exists, the holding agency or the Archivist of the United States can declassify such information, as appropriate.

- Unclassified information may be classified if it would provide the "missing link" to classified information. This applies primarily to data compilation known as the "mosaic approach" (e.g. putting together missing "puzzle pieces" to obtain classified information).

- Federal courts will normally give the "utmost deference" to an agency's expert opinion as to what is, and is not, classified.

- Under the 1986 amendments to the FOIA, the FBI may treat classified records pertaining to foreign intelligence or counterintelligence, or to international terrorism, as not subject to the requirements of the FOIA. Such FBI information in DCAA's possession would be subject to the same exclusion, however, coordination with the FBI is required before executing this exclusion.

How is Classified Information Defined?

The current authority to classify National Security Information Is Executive Order 12356, which became effective on August 1, 1982. It specifies the following levels of classified information:

- Top Secret applies to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.

- Secret applies to information, the unauthorized disclosure of which could be expected to cause serious damage to the national security.

o Confidential applies to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security.

"Official Use Only," "Safeguards Information," and "Restricted Data," and similar markings are not classification levels, although such information may be withholdable under other exemptions to the FOIA.

To be withheld under Exemption 1, a court must find that the record was properly classified from both the substantive and procedural standpoint. That is, the record must contain information which, if disclosed, could be expected to damage national security, and the record must be appropriately marked by a person authorized to classify records. As in the case of the other FOIA exemptions, only that portion of information which is classified may be withheld from disclosure. The Executive Order requires that "each classified record shall, by markings or other means, indicate which portions are classified, with the applicable classification level, and which portions are not classified." Executive Order 12356 also specifically provides in section 1.6(a) that:

> **In no case shall information be classified in order to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interest of national security.**

It also provides that basic scientific research information may not be classified unless it is clearly related to national security.

When a FOIA request is received for a classified record, it is the responsibility of the original classifying office (e.g., the authorized classifier) to conduct a declassification review of the record to segregate exempt classified information from nonexempt unclassified information. Questions as to whether a particular type of information is classified should be referred to Security Officer.

Periodically when searching records for a FOIA request, DCAA offices identify records which have not been properly classified but which are thought to contain classified information. When this occurs, the requester may be notified that the records are being withheld pursuant to Exemption 1 pending a classification review. Under the Executive Order, a record may be classified after receipt of an FOIA request only by the agency head or another official with Top Secret classification authority.

How does DCAA Process Requests for Information Classified by Other Agencies?

Section 3.4(f)(2) of Executive Order 12356 provides that:

> **When an agency receives any FOIA request for records in its custody**

> **that were classified by another agency, it shall refer copies of the request and the requested records to the originating agency for processing, and may, after consultation with the originating agency, inform the requester of the referral. In cases in which the originating agency determines in writing that a response under Section 3.4(f)(1) is required, the referring agency shall respond to the requester in accordance with that Section.**

Section 3.4(f)(1) pertains to agencies which produce foreign intelligence information, and provides that if acknowledging the existence or nonexistence of a record itself is classifiable, then the agency, in responding to an FOIA request, shall refuse to confirm or deny the existence or nonexistence of the information. Glomarization, however, is not restricted to foreign intelligence records.

When classified records in DCAA's possession from another agency are found which are subject to an FOIA request, DCAA refers the request to the originating agency.

How does DCAA Process Requests for Classified FBI Intelligence Information?

The 1986 amendments to the FOIA added an exclusion for classified FBI records "pertaining to foreign intelligence or counterintelligence, or international terrorism." Section 552(c)(3) states that:

> **Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.**

If FBI records of this type were in DCAA's possession, the same exclusion would apply, and the records would not have to be identified in response to an FOIA request. DCAA should inform the FBI of the request, and identify the records requested so that the FBI can determine if they come within the scope of the exclusion. If the FBI determines them to be within the scope of the exclusion, a "no record" response shall be given. If DCAA receives a request for such records, the staff should contact the Security Officer immediately.

What is the Mosaic Approach to Classified Information?

Courts have also accepted a "jigsaw puzzle" or "mosaic" approach to the classification of information by which an agency can classify information otherwise unclassified if it could provide the "missing link" to classified information. This policy is based on Section 1.3(b) of the Executive Order which allows the classification of information, either by itself or in the context of other information, if it could reasonably be expected to cause damage to the national security. This theory has also been used to protect a "compilation" of materials the component parts of which were not otherwise classified, but when compiled, renders the compilation classified.

Can the Courts Review Classified Information that's been Withheld?

While a court must make an independent determination (referred to as a de novo review) as to whether information proposed for withholding is classified, courts generally uphold the agency's action if (a) there is a reasonable basis for a finding that releasing the information could cause potential harm, (b) the information withheld logically falls within the claimed exemption, and (c) there is no evidence to controvert the government's claim or to suggest bad faith. Other courts have said that the agency's actions must be given the "utmost deference" in view of the knowledge and experience of agency staff regarding what information it is necessary to classify for national security reasons. However, recent trends indicate courts are beginning to challenge agency use of Exemption 1 more than in the past. Consequently, it is incumbent upon all classifiers of information to use this action with the utmost care.

What happens if there's an Unauthorized Release of Classified Information?

If a classified record is leaked or inadvertently disclosed outside the agency, the agency is not required either to declassify the record or to disclose its existence under the FOIA, nor is it required to confirm whether the published version of a classified record is authentic.

Exemption 2 - Internal Rules and Practices

Highlights

- Exemption 2 of the FOIA permits an agency to withhold records which "relate solely to the internal personnel rules and practices of an agency."
- It encompasses two distinct categories of information: internal matters of a relatively trivial nature, sometimes referred to as "low 2" information; and more substantial internal matters the disclosure of which would risk circumvention of a legal requirement, sometimes referred to as "high 2" information.
- Records relating to minor internal administrative matters in which the public is not expected to have any interest, such as hours of work, sick leave, parking facilities, etc., may be legally withheld. However, DCAA would normally exercise its discretion to release these types of records.
- Records which, if disclosed, would enable a person to circumvent a law, rule, or policy may be withheld.
- Records of legitimate public interest, or those which inform a person of what he must do to comply with the law, cannot be withheld. (Courts have said that "secret law is an abomination.")
- Exemption 2, at the present time, is available to but seldom used by DCAA. It is used most frequently by law enforcement agencies, such as the FBI or the Internal Revenue Service.

What Internal Agency Records may be Withheld?

The Supreme Court has said that the "general thrust of the exemption is simply to relieve agencies of the burden of assembling and maintaining for public inspection matters in which the public could not reasonably be expected to have an interest. Examples used in the Senate Report adopting the FOIA are "rules as to personnel's use of parking facilities or regulations of lunch hours, statements of policy as to sick leave, and the like." Also, with respect to routine personnel and administrative policies and procedures, it is unlikely that DCAA would withhold the information even if it were legally exempt. Rather, it is more likely that DCAA would exercise its discretion and release the information if requested.

Exemption 2 has, however, been used in the past by DCAA, and continues to be used by law enforcement agencies. The House Report on the FOIA says Exemption 2 could be used to protect "operating rules, guidelines, and manuals of procedure for Government investigators or examiners." Thus, courts have held that Exemption 2 may be used to withhold material which, if disclosed, "would significantly impede enforcement of the law or would have the sole effect of enabling violators to escape detection," or "would tend to defeat the purpose of inducing maximum voluntary compliance by revealing classes or types of violations which must be left undetected or unremedied because of limited resources.

Examples of guidelines and manuals still withheld by other agencies include:

- Guidelines for the exercise of prosecutorial discretion in criminal matters by the U.S. Attorney's Office.
- Computer programs used by the Environmental Protection Agency to detect violations of the United States antidumping laws.
- Portions of the Secret Service Manual relating to methods used to investigate crimes.
- The Law Enforcement Manual of the Internal Revenue Service (IRS) which contains:

  time limits used by the IRS to determine when a late payment of tax liability will be accepted as timely,

  a range or specific dollar amounts above or below which a deduction will trigger the return to be selected for audit and

  the specific dollar amounts that are applied to particular deductions to determine whether other deductions on the return warrant closer scutiny.
- DoD Security Classification Guides.
- DoD Office of the Inspector General Investigator's Manual.

Exemption 3 - Information Exempted by Statute

Highlights

o Exemption 3 of the FOIA permits an agency to withhold information which is "specifically exempted from disclosure by statute provided that such statute (a) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (b) establishes particular criteria for withholding or refers to particular types of matters to be withheld."

What Kinds of Information are Exempted by Statute?

Any statute invoked as the basis for withholding information pursuant to Exemption 3 must clearly require that the information be withheld and must not permit the agency any discretion on the release; or the statute must establish specific criteria for withholding or refer to particular types of information to be withheld. In essence, the courts have said that the statute must incorporate a Congressional mandate of confidentiality that is "absolute and without exception.

Can Grand Jury Information be Withheld?

Periodically DCAA audits uncover alleged violations of Federal statutes which are forwarded to the Department of Justice. If the matter is referred to a grand jury, and DCAA receives a request for records while the matter is pending before the grand jury, the records may be denied under Exemption 3, pursuant to Rule 6e of the Federal Rules of Criminal Procedure. Agencies can only deny records actually seen by the grand jury under Rule 6e. Other relevant records, which may have been sent to the Department of Justice but which have not been seen or seized by the grand jury, will be denied pursuant to Exemption 7(A) of the FOIA. Rule 6e also protects grand jury transcripts, the identities of witnesses and jurors, the substance of testimony, the strategy or direction of the investigation, the deliberations or questions of the jurors, and the like.

Exemption 4 - Proprietary Information

Highlights

- Exemption 4 of the FOIA permits an agency to withhold records that are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

- A trade secret is any formula, pattern, device, or compilation of information which is used in one's business, and which gives the owner an advantage over competitors who do not know it or use it. The Coca-Cola formula is the classic example of a trade secret.

- Confidential commercial or financial information can be withheld if disclosure is likely either to:

  impair the government's ability to obtain necessary information in the future, or

  cause substantial harm to the competitive position of the person or firm from whom the information was obtained.

- Trade secrets and confidential commercial or financial information are generally referred to within DCAA as "proprietary information."

- Proprietary information submitted to DCAA must meet certain requirements, that is:

  it must be the type of information customarily held in confidence by the owner, and it must have been held in confidence by the owner at the time of the request.

  it must have been transmitted to and received by DCAA in confidence.

  it must not be available in public sources, and

  it must be the type of information which, if publicly disclosed, would be likely to cause substantial competitive harm to the owner.

- Before disclosing any information believed to be proprietary, the staff must consult first with the owner of the information. If there's doubt about whether the information is proprietary and it is requested by a member of the public, the person must be told to file a formal FOIA request for the record. This procedure will entitle the requester to an official decision, and protect the staff from inadvertent disclosure.

- If DCAA intends to disclose information claimed to be proprietary, the agency's practice is to give the owner 15 days prior notice in order to seek an injunction. Under certain circumstances, the owner can withdraw the information from DCAA; however, the owner cannot withdraw the information after a FOIA request for it has been filed.

- When obtaining information from contractors or others, the staff must have a clear understanding of what is and is not claimed to be proprietary.
- If a proprietary record is not needed, it should be returned to the owner as soon as possible.
- Proprietary information should not be taken to a DCAA office if it can be used at the site.
- Since contractor records can normally be obtained by subpoena or other means, the staff must never sign a pledge of confidentiality as a condition for obtaining access to a record needed in the performance of staff duties without first checking with legal counsel.

What Types of Proprietary Information can be Withheld?

To withhold a record under Exemption 4, it must be shown that (a) the information is a trade secret, or (b) it is privileged or confidential commercial or financial information obtained from a person or company.

What are Trade Secrets?

The Supreme Court has defined a "trade secret" as:

> **Any formula, pattern, device, or compilation of information which is used in one's business, and which gives him an advantage over competitors who do not know it or use it.**

To qualify as a trade secret, the information must be commercially valuable, used in one's business, and maintained in secrecy. Unlike patents or copyrights, which protect an owner's interest by Federal law for a set number of years, trade secrets qualify for withholding only as long as they are maintained in secret. Perhaps the most famous trade secret is the so-called "mystery ingredients" of the original Coca-Cola beverage. Apparently 99 percent of the Coca-Cola formula is known, but competitors have been unable to identify the missing ingredient(s) for more than 80 years.

Mistakes in the handling of trade secret information can also be quite costly. In the summer of 1982 an employee for the Environmental Protection Agency (EPA) accidentally released the secret formula for the Monsanto Company's weed killer "Roundtop," which the company distributes worldwide. Although the information was eventually retrieved and returned to EPA, Monsanto estimated that its losses could have amounted to $480 million per year.

What Kinds of Commercial or Financial Information can be Withheld?

In a case involving National Parks and Conservation Association v. Morton, the D.C. Circuit Court held that confidential commercial or financial information can be withheld if disclosure is likely to either:

- o impair the government's ability to obtain necessary information in the future, or

- o cause substantial harm to the competitive position of the person from whom the information was obtained.

Usually, contractor names do not fall within either test.

What is the Impairment Theory?

The courts have held in a number of cases that if a person or company is required to provide information to the government by statute, regulation, or as a condition to obtaining a valuable benefit, it is unlikely that the government's ability to obtain similar information will be impaired by disclosure. The courts have also held that it is not enough for an agency to assert simply that it received information under a pledge of confidentiality to the supplier of that information, although a promise of confidentiality would be one factor to be considered. These factors notwithstanding, DCAA occasionally receives information from foreign and domestic sources, which if released, would impair the agency's ability to receive similar information in the future. For these rare situations, the impairment theory remains a viable legal option.

What is the Test for Competitive Harm?

Under the "substantial competitive harm" test, DCAA deals with two types of proprietary information -- technical information and commercial or financial information. Technical proprietary generally deals with processes, methods, equipment, calculations, codes, and other sensitive information submitted in the contracting process. Commercial or financial information generally deals with information such as costs, profit margins, plant capacity, market shares, customer lists, sales, price terms, names of employees, competitive vulnerabilities, proposed product or process changes, and similar information submitted to DCAA as part of the contracting process.

What is the Predisclosure Notification Procedure for Confidential Commercial Information, "(b)(4) Consultation"?

Executive Order 12600 of June 23, 1987, requires predisclosure notification procedures of confidential commercial information when such records are requested under the Freedom of Information Act.

When a request is received for a record containing information provided by a source outside the Federal Government, which is subject to disclosure and, if disclosed, could reasonably be expected to cause substantial competitive harm to the source, the Agency will notify the source of the pending disclosure determination and provide the source or its designee with an opportunity to object to the disclosure of any specified portion of the information and to state all grounds on which disclosure is opposed. Notice and consultation with the source of such information is not required, however, when the activity determines:

- The information should not be disclosed.

- The information or record has been published or officially made available to the public.

- Disclosure of the information is required by a law other than the FOIA.

In consulting sources under this procedure, DCAA offices shall provide sources a reasonable period of time to present objections to disclosure. The requester shall be provided a concurrent notification on the use of this consultation procedure with an estimated date for the disclosure determination.

DCAA offices should give careful consideration to all specified grounds for nondisclosure presented by the source. Initial denial authorities will make disclosure determinations. When a substantial issue has been raised, the Initial Denial Authority (IDA) may seek additional information from the source and afford the source, as well as the requester, reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making an Agency determination.

When the initial denial authority determines the information is appropriately withheld, the Initial Denial Authority should issue a denial to the requester and shall provide a copy of the determination to the source.

In those instances when the source has objected to disclosure, and the Initial Denial Authority determines the information will be disclosed, the activity should provide the source with a written statement which briefly explains the reasons for disclosure and a scheduled date for release to the requester. The statement is to be provided to the source, by certified mail with return receipt, reasonably prior to the specified disclosure date. A copy of this statement should also be provided to the requester. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the activity will notify the requester of the proposed action.

Likewise, whenever a DCAA office is informed that a FOIA requester has brought suit in court seeking to compel disclosure of confidential commercial information, the source will be notified promptly of the suit.

How does the Staff Respond to Requests for Records Containing Proprietary Information?

If proprietary data is subject to a FOIA request, the staff must review the data to assure that it is still entitled to withholding pursuant to the criteria specified in the Act. As in the case of the exemptions to the FOIA, a line-by-line review of the document is necessary.

DCAA routinely receives information from foreign governments, companies, or individuals located in other countries. This information may be received informally by members of the staff during discussions with participants attending international conferences or may be obtained from a U.S. vendor doing business in a foreign country. In most cases the information is not marked, so the staff will not know if the information has been made public by the foreign government. These records are treated as proprietary if they contain information submitted in confidence by a foreign source.

Can Owners of Proprietary Information Sue DCAA to Prevent its Release?

Owners of proprietary information who disagree with DCAA's decision to release information can file a reverse FOIA suit against the agency, based on Section 10(a) of the Administrative Procedure Act, alleging that the proposed agency action is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law. In this case, the other "law" being invoked includes Exemption 4 of the FOIA, the Trade Secrets Act," and the Fifth Amendment of the Constitution, which prohibits the unlawful taking of property without due process.

(Note: "The Trade Secrets Act, 18 U.S.C. 1905, enacted on June 25, 1948, makes it a crime for any government employee to disclose trade secrets or other confidential business information. One court has said that the Trade Secrets Act is so broad that it "could include all information relating to corporate operations in any fashion," and such a reading would simply vitiate the FOIA. Consequently, it should not be used as an Exemption 3 statute. It concluded, therefore, that "it must rely not upon the bare, broad, language of 1905, but upon those cases which have specifically interpreted the terms 'trade secrets and commercial or financial information' as they are used in Exemption 4 of the FOIA.")

After a reverse FOIA suit has been filed, the court reviews the administrative record compiled by the agency in making its determination to release the document or portions considered proprietary by the owner of the information. Thus, it is vital that DCAA's rationale for disclosure is clearly set forth in the administrative record, and that each step on the record adequately records why the agency found that the information was not proprietary and, thus, was subject to release under the FOIA.

How should Incoming Proprietary Information be Handled?

o When obtaining information from contractors and others, the staff must have a clear understanding of what is, and is not, claimed to be proprietary.

o Any proprietary information in DCAA's possession must be clearly marked and safeguarded.

o If a proprietary document is not needed, it must be returned to the owner or contractor as soon as possible. If the record or document for which withholding is sought is deemed by the Agency to be irrelevant or unnecessary to the performance of its functions, it shall be returned to the originator.

- Proprietary documents should not be taken back to the office if they can be used on site.

- Particular attention should be paid to maintaining copies of a contractor's records at the Resident office on site. In many cases, contractor's records provided to an auditor for information will not withstand a legal challenge under Exemption 4, although the records would not normally be made public by the contractor.

- Since the staff can normally obtain contractor records by subpoena or other means, the staff should never sign a pledge of confidentiality as a condition to obtaining access to a record needed in the performance of staff duties without first checking with legal counsel.

- If circumstances require, arrangements can be made to review proprietary information at a location other than DCAA offices, such that the information will not come into DCAA's possession and control of and will not be subject to the FOIA. Legal counsel should be consulted if such arrangements become necessary.

- No record, including a proprietary record, may be returned to a contractor after that record becomes the subject of an FOIA request.

- Although DCAA is not aware of anyone being prosecuted under the Trade Secrets Act (18 U.S.C. 1905), the Act does provide criminal penalties for the unlawful disclosure of confidential commercial information, and provides further that the person found guilty of such disclosures "shall be removed from office or employment."

Exemption 5 - Predecisional Information

Highlights

- Exemption 5 of the FOIA permits an agency to withhold interagency and intra-agency memorandums and letters which would not be available by law to a party in litigation with the agency.
- To exempt a record from disclosure utilizing Exemption 5, the record must normally be either:

  (a) a document transmitted from one Federal agency to another, or

  (b) a document transmitted from one person in an agency to another person in the same agency.
- Normally, records received from outside the Federal Government cannot be withheld under Exemption 5.
- The purpose of Exemption 5 is to encourage the full, frank, and candid exchange of opinions needed for good decisionmaking. It recognizes that the government cannot operate in a fish bowl.
- Only that part of the record which contains predecisional advice, opinions, and recommendations of the staff given during a deliberative process, i.e., the process in which an agency makes its decision, can be exempted.
- Purely factual information must be segregated from advice, opinions, and recommendations in predecisional records.
- FOIA Coordinators have the discretion under the FOIA to release predecisional information.
- In some cases, it is also possible to withhold information under Exemption 5 even if the records were prepared by persons outside the Federal government. This exemption exists because in some situations the government may have a special need for the opinions and recommendations of temporary consultants who are experts in their field. If these consultations were solicited by the agency and are an integral part of the deliberative process, the information may be withheld.

What is Predecisional Information?

Exemption 5 is intended to incorporate the government's common law privilege from discovery in litigation. It protects advice, recommendations and opinions which are part of the deliberative, consultative, decisionmaking processes of the government. Its purposes are (a) to encourage the full, frank, and candid exchange of opinions needed for good decisionmaking; (b) to protect against premature disclosure of proposed policies before they are finally adopted; and (c) to protect against public confusion by disclosure of reasons and rationales that were not in fact the actual reasons for the agency's actions.

To exempt a record from disclosure utilizing Exemption 5, the record must normally be either:

o information transmitted from one Federal agency to another), or

o information transmitted from one person in an agency to another person in the same agency).

Records received from any source outside of the government, with the limited exception of certain consultant reports, normally cannot be protected under Exemption 5. For example, if DCAA receives a contractor record that discusses options for dealing with a problem and recommends possible solutions, that record cannot be protected under Exemption 5, even though it is a predecisional record. Similarly, communications received from state government agencies cannot be protected under this exemption. Exemption 5 only applies to records originated by the employees or consultants of Federal agencies.

As noted above, in some cases it is possible to withhold information under Exemption 5 even if the records were prepared by persons outside of the government. This exemption recognizes that in some situations the government has special needs for the opinions and recommendations of temporary consultants who are experts in their field. If these consultations were solicited by the agency and are an integral part of the deliberative process of the agency, and if there is reason to believe that this disclosure would inhibit frank discussion of policy matters and likely impair the quality of agency decisions, the advice, opinions, and recommendations may be withheld pursuant to Exemption 5.

Although predecisional advice, opinions, and recommendations may be protected, the final decision, and certain interpretations of that decision, are not protected, and must be released. A decision is considered final when action is taken by a responsible decision maker in the agency's decisionmaking process which has the practical effect of disposing of a matter before an agency. Typical examples are:

o A final report must be released; drafts of the report may be withheld as predecisional.

o Input by a member of the staff to a report may be withheld as predecisional even if the staff's input is incorporated virtually verbatim into the final report, however, normally this information is released at the discretion of the FOIA Coordinator.

o An Agency paper recommending a certain course of action is predecisional. The Agency's decision as issued by the Director is not. If the Agency's decision adopts a proposed or final rule, or other record, that rule or record is incorporated by reference into the decision and may also be public.

o Agency briefings may or may not be predecisional, depending upon their purpose. Generally, status reports about staff actions implementing Agency decisions are post-decisional and must be released.

o A log indicating the status of proposed regulations pending review by an agency is factual information and must be disclosed.

o Headquarters guidance to the regions is not predecisional material.

Can Factual Material be Segregated?

Normally, factual information must be segregated from advice, opinions, and recommendations in predecisional records, except for drafts, certain legal work products, and records covered by the attorney-client privilege. Because of this, some offices, in accordance with the discretionary release policy of the FOIA, opt to release predecisional records even though portions of those records could have been withheld under Exemption 5. In these cases, the offices have decided, on balance, that it is not worth the staff effort involved to review a stack of records meticulously to segregate predecisional material from purely factual information. Where the final record reflects the input of several DCAA offices, such as a rulemaking record which has been circulated to other offices for concurrence or comment, the decision to release or withhold the offices' comment memoranda rests with the office originating the rule change. The reason for this policy is that the comment memoranda themselves frequently reflect the substance of the proposed rule, so release of the memoranda would be tantamount to release of the rule.

In these situations, the denying official is the head of the office responsible for the rule and not the head of the office making the comments.

There are several exceptions to the segregation requirement:

o If facts in a predecisional record are "inextricably intertwined" with exempt material so that their release would itself reveal the deliberative process, then it is not necessary to separate the factual material. For DCAA's purposes, factual material is "inextricably intertwined" if, after the deletion, the remainder of the record is essentially meaningless. The basis of the decision is whether the segregation would reveal the deliberative process.

o When facts, otherwise available to the public, are selected or summarized in such a way that they reflect the deliberative process, such as by showing which facts out of many are considered important to the decision makers, the factual portions may be withheld.

o Where the final record is made available, it is not necessary to segregate the factual information contained in prior drafts of the record. However, if the draft version is requested, segregation of factual material would be necessary in most cases not adopted for discretionary release. If there is no final record, perhaps because the agency decided not to release the report and no further agency effort is anticipated, factual information contained in the last draft must, in most cases, be segregated from predecisional information.

What is the Procedure for Processing Requests for Audit Reports and their Related Working Papers where the Contracting Officer has Determined the Report to be "Predecisional and Deliberative" and thereby Subject to the Deliberative Process Privilege of Exemption 5?

The typical scenario has the Agency coordinating with the contracting officer as part of the consultative process concerning the releasability of an audit report requested under the Act. As a result, the contracting officer advises that the audit report is as of yet predecisional and should be withheld from public disclosure until such time that the deliberative process has been completed. Often the contracting officer will offer a general time frame within which the final decision will be rendered concerning the opinions and recommendations contained in the report. As a side consideration, the record may also be potentially exempt under the provisions of Exemption 4 of the Act which provides for the withholding of commercial and financial information, obtained from a person, that is privileged or confidential.

Given the circumstances provided above, the portion of the request seeking the audit report should be referred to the DoD contracting officer's Freedom of Information Act office for their release determination and direct response to the requester. The referral should also advise that DCAA will respond to the requester concerning the working papers and will withhold the responsive records under Exemption 5 of the Freedom of Information as a result of the initial consultative effort. Again, some portions may be withheld under Exemption 4 which should be invoked if applicable.

FOIA Coordinators should provide a copy of their response to the requester to the contracting officer's Freedom of Information Act office. The response should be very explanative and should normally detail the purpose of the audit report (advice and recommendations prepared for the contracting officer, the report is the property of the contracting officer, etc...), why Exemption 5 was invoked (to protect the decision-making process of the contracting official, etc...), offer general information as to when the final decision may be rendered, advise concerning statutory appeal rights, and finally, elaborate on your willingness to process a future request at such time that the audit report is no longer predecisional.

Are Attorney Records Exempt from Withholding?

Attorney's work-product refers to records prepared by an attorney or the attorney's staff in anticipation of litigation, and which reveal the theory of the case or litigation strategy. These records are protected under Exemption 5, and remain protected even after the litigation has terminated. Attorney-client privilege refers to confidential communications between the attorney and the client exchanged as part of the process of obtaining informed legal advice in a job-related situation. For both cases, it is not necessary to separate factual information in records covered by the privileges because of the evaluative nature of the factual material in the context of developing or providing legal advice. In addition, factual material prepared by a party in anticipation of litigation is discoverable only upon a showing of substantial need and would be exempt from disclosure under the FOIA even if segregable.

Are Contract Estimates Exempt from Withholding?

Cost information prepared by an agency of the anticipated costs of awarding a contract may be withheld under Exemption 5 because it would place the government at a competitive disadvantage if released. After the contract has been awarded, prior government cost estimates can no longer be protected. This same rationale has been used to apply to situations where government property is sold to the public or when the government brings condemnation proceedings against real estate.

Exemption 6 - Personal Privacy Information

Highlights

- Exemption 6 of the FOIA permits an agency to withhold "personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."
- Generally it is intended to apply to the intimate and personal details of one's life, and covers information such as the legitimacy of children, medical conditions, welfare payments, religious affiliations, school records, and the like.
- Where privacy information is found, the FOIA then requires a balancing of interests between the protection of an individuals private affairs from unnecessary public scrutiny, and the preservation of the public's right to government information.
- The term "clearly unwarranted" contained in the exemption instructs an agency "to tilt the balance in favor of disclosure."
- Where misconduct by a government employee is involved, particularly a high level official, the balance is tilted heavily in favor of disclosure because the public has an interest in whether public servants carry out their duties in an efficient and law-abiding manner.
- Under OPM regulations, an employee's position, grade, salary, and duty station are public information.
- In response to a FOIA request by an unselected candidate for a vacancy, DCAA will make available essentially everything on the SF 171 of the candidate selected that deals with education, training, and qualifications for employment.
- The right to privacy is a personal right. There is no right to privacy in a corporation, and there is no right to privacy in a dead person. However, if personal information about a dead person would harm or embarrass the next of kin, it may be protected.

What is an Individual's Right to Privacy under the FOIA?

More than any other exemption in the FOIA, Exemption 6 requires agencies to balance an individual's right to privacy against the public's right to government information. As stated in the Senate Report on the FOIA, "the phrase 'clearly unwarranted invasion of personal privacy' enunciates a policy that will involve a balancing of interests between the protection of an individual's private affairs from unnecessary public scrutiny, and the preservation of the public's right to government information."

The right to privacy is a personal right. There is no right to privacy in a corporation, and there is no right to privacy in a dead person. Conversely, if personal information about a dead person could harm or embarrass the next of kin, it may be protected. Examples include President Kennedy's autopsy report and photos, information concerning the legitimacy of children, and information concerning the personal and family life of an organized crime figure.

Early court decisions about Exemption 6 focused on the term "personnel and medical files." The courts said the exemption was intended to protect the intimate and personal details of one's life, and covered information such as the legitimacy of children, medical conditions, welfare payments, alcoholic consumption, religious affiliations, school records, and the like. Where personal privacy information was contained in records other than "personnel and medical files," the courts then went to considerable length to analyze whether these records were "similar" to "personnel and medical files." The results were inconsistent and confusing. In 1982, the Supreme Court settled the issue in the case of Department of State v Washington Post Co. There the Supreme Court said that the phrase "similar files" was to have a broad meaning, and information should not lose its Exemption 6 protection merely because it is stored in records other than "personnel" or "medical" files. Consistent with the Washington Post decision, DCAA looks to the substance of the information to be protected rather than where the information is located.

The courts have said that the "clearly unwarranted" language in the exemption instructs an agency "to tilt the balance in favor of disclosure." This does not mean, however, that the mere fact that information is a matter of public record somewhere in the United States makes it automatically available under the FOIA. An agency is required to balance the harm in releasing information against the public's right to know "under all the circumstances of a given case." Thus, even though information such as date and place of birth, marital status, home address and telephone number, arrest records, and past criminal convictions may be a matter of public record somewhere, this information normally would not be disclosed by DCAA.

What Types of Information about Federal Employees may be Disclosed?

Under the regulations of the Office of Personnel Management (5 CFR 293.311 (1985)), the following information about most present and former Federal employees is available to the public:"

- Name,
- Present and past position titles,
- Present and past grades,
- Present and past annual salary rates, including awards, bonuses, allowances, and differentials,
- Present and past duty stations, including room number and business address, and
- Position descriptions and job elements.

"Some courts have held that the "privacy interest" of the average employee in his address is not particularly compelling." If the court can find a benefit to the employee in giving out the address, such as VA health benefits available to servicemen who participated in atmospheric nuclear weapons testing and no other means of contacting the employee is feasible," or if the agency has a duty to make information available to a union under the Federal Service Labor-Management Relations Statute (see 5 U.S.C. 7114(b)(4)), home addresses will be made available.

In intelligence agencies and law enforcement agencies, information about employees may be withheld on the basis that it is classified (Exemption 1) or that its disclosure would endanger the lives of law enforcement personnel (Exemption 7(F)).

What Types of Information about Federal Employees are Exempt from Disclosure?

The following information about its employees is normally withheld by DCAA:

- Home address and telephone number,
- Date of birth,
- Social security number,
- Personal medical conditions,
- Performance evaluations,
- Salaries in non-Federal positions,
- Personal financial matters,
- Information concerning relatives,
- Derogatory information (crimes, drinking, firings, etc.), and
- Unsubstantiated allegations of misconduct

Can Job Applications be Disclosed?

In response to a FOIA request by an unselected candidate for a vacancy, DCAA will make available:

- The requester's evaluation on each of the rating factors and the final evaluation;
- The name and final evaluation of the selected candidate;
- The names of all highly qualified candidates;
- The evaluations of all other candidates with the names deleted;
- Essentially everything on the SF 171 of the selected candidate that deals with work experience, education, training, awards, and qualifications for employment.
- Any statement by the selected candidate of his or her qualifications in relation to each of the rating factors for the position.

DCAA withholds from disclosure:

- Information on the SF 171 of the selected candidate that does not deal with qualifications for employment, such as birth date, social security account number, home address, telephone number, personal references, information about relatives, the names of former non-Federal supervisors, and salaries in non-Federal positions;

- The performance appraisals of the selected candidate and other candidates.

- The SF 171s of candidates other than highly qualified candidates.

DCAA's policy is consistent with that recommended by the Department of Justice. One court also noted that Congress directed the Justice Department to encourage agencies to comply with the FOIA, and "the policies that the Department recommends to other agencies merit careful consideration."

Can Misconduct Information about Federal Employees be Disclosed?

Where disclosure of misconduct by a government employee is involved, the courts have gone both ways on the issue. If the misconduct involves a senior official or widespread public notoriety, the balance is tilted heavily in favor of public disclosure. The following cases are indicative of the courts' reasoning:

- In a 1977 case, two meat inspectors working for the Department of Agriculture were convicted of taking bribes from meat packing companies. When the Agriculture Department sought to withdraw federal inspection services from one of these companies, the company sought the personnel evaluations and other records on the employees to see if their supervisors knew of their actions. In agreeing to release the records, the court said:

> We agree, however, with the district court that "the public has an interest in whether public servants carry out their duties in an efficient and law-abiding manner" and, therefore, in these circumstances, has a legitimate curiosity as to the two meat inspectors' careers. Ordinarily the individual careers of public servants would be of small general interest,...but the scandal in which Columbia and the inspectors participated was far-reaching and of great notoriety. To forestall similar occurrences, the public has an interest in discerning how the officials conducted themselves prior to their discharge for bribery, how well they were supervised, and whether USDA or any of its other personnel were chargeable with any degree of culpability for their crimes. In particular, the public has an interest in knowing whether companies like Columbia were the victims of official extortion or whether the corrupt inspectors were enticed into their misconduct by the companies.

- In another case, two employees of the Internal Revenue Service conducting an audit investigation of a company's tax return inadvertently allowed the statute of limitations to run out even though the company owed $127,000 in back taxes; the two employees were disciplined. When the investigation was later reopened because of possible fraud by the company, the company sought various records, including memoranda of the disciplinary proceedings against the two employees. The District Court released the disciplinary memoranda, but withheld the names of the employees and other identifying information. On appeal, the court said:

> ...we find that the district judge reached a workable accommodation of the IRS employee's privacy interest in avoiding publication of embarrassing personal information and the public's interest in knowing about the conduct of IRS operations.... [The requester's] personal interest in knowing the identities of the persons discussed in the reports adds nothing to the equation.

o Another case involved television news reporter Carl Stern and the FBI's illegal wiretapping of political activists which eventually led to the indictment of FBI Director L. Patrick Gray and others. As an outgrowth of the wiretap investigation, there was a subsequent investigation of whether other FBI employees truthfully furnished all data of surreptitious entries and wiretapping to GAO and to Congressional committees. Three employees who contributed to a cover-up were still employed by the FBI, and Stern sought the names of the three employees. Two of these employees, whom the court referred to as "lower-level employees," contributed inadvertently to the cover-up through "negligence and general bureaucratic bungling." In one case, the employee was censured for failing to review files thoroughly, and in the other case the employee was censured for his lack of perseverance in gathering complete and accurate information. The court found that the names of these employees should be withheld, saying:

> ...where the release of the names of the two censured employees could cause them to become associated with notorious criminal investigations, where those employees were found to have contributed only inadvertently to the wrongdoing under investigation, and where the public interest in their identities is grounded only in a general notion of public servant accountability, the employees' privacy interest in nondisclosure is paramount and protects their identities from being revealed.

For the third employee, who was the Senior Agent in Charge (SAC) of the New York Office and who knowingly participated in the cover-up, the court said the balance "tips toward disclosure." It went on to say:

> There is a decided difference between knowing participation by a high-level officer in such deception and the negligent performance of particular duties by the two other lower-level employees. The excuse that the SAC was merely following orders

> should not prevent the public from being informed that a specific "senior bureau official" followed a deliberately chosen course when placed, perhaps, between a hard rock and his conscience. One basic general assumption of the FOIA is that, in many important public matters, it is for the public to know and then to judge.

How do Agencies Decide whether to Release Misconduct Information?

Executive Order 11222 provides as a general statement of policy regarding a government employee's official duties. It stated:

> When government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of his government. Each individual officer, employee, or adviser of government must help to earn and must honor that trust by his own integrity and conduct in all official actions.

DCAA may consider, among others, the following factors in deciding whether or not to release the name and other information about an agency employee accused of wrongdoing.

- Has agency action on the allegation of wrong doing been completed, or is the matter still under investigation?
- Has the employee been convicted of a crime or received internal DCAA disciplinary action?
- Has there been widespread public notoriety to the event involved?
- Is the employee involved a senior official or a lower level employee?
- Does the charge involve intentional wrongdoing or merely inadvertence or negligence?

Are Mailing Lists of Agency Employees Exempt?

As noted earlier, the name and work address of government employees is public information under OPM's regulations; in fact, the DoD telephone book is sold by the Government Printing Office. DCAA frequently receives requests from insurance companies and other commercial organizations for lists of employees in the regions or Headquarters offices. While DCAA must grant these requests and make the information available, it tries to discourage commercial solicitations by noting in the response letter that, under U.S. Postal Regulations, mail addressed to an employee at his or her agency duty station is the property of DCAA and not the employee, and that because of demands on DCAA's internal mail system, bulk mail received by the agency may be refused and returned to the sender. In practice, DCAA does not actually attempt to intercept an employee's mail that may have either business or personal significance.

Are Other Mailing Lists Exempt?

DCAA maintains many other mailing lists by which reports, press releases, and other documents are routinely distributed to the public. When requests are received for these lists, DCAA makes available those names on the list which have business addresses. Although there are a few cases in which home addresses have been released by the courts based upon special benefits that may accrue to the individuals involved, this situation has not arisen at DCAA.

How does the Mosaic Theory Apply to Privacy Information?

The "mosaic" theory, which can be used for classified information can also be used to withhold privacy information if the information which would be released, when added to the other information already publicly available, would provide the missing link. It was used to withhold the names of drugs prescribed by the Congressional Physician even though the names of present and former members of Congress and members of the Supreme Court were deleted. The District Court in that case said that with a working knowledge of the symptoms and purposes for which certain drugs are prescribed, the information could be the "missing link" for a person with fragmented knowledge about a member's health. (See Arieff v. Dept. of the Navy (Dist. Ct. of D.C., April 27, 1982.) However, on appeal, D.C. Court of Appeals specifically rejected the mosaic theory as it applies in this particular case. It did not, however, reject its use if appropriate circumstances arise in the future.

Quoting the Supreme Court, the Court of Appeals said that invoking of Exemption 6 requires "threats to privacy interests more palpable than mere possibilities." Here, it said, there are 600 possible recipients for the drugs, and the chance that the medical condition of a particular individual might be disclosed is no more than a "mere possibility." It went on to say that Exemption 6 requires that the "disclosure...would constitute a clearly unwarranted invasion of personal privacy," and that this has not been shown in this case (emphasis in original).

What are the Processing Procedures for Requests where the Responsive Records Contain or Imply the Identity of Individuals who have been Given an Expressed Statement or Promise of Confidentiality?

The protection of the identity of individuals who have been given an expressed statement of confidentiality is not specifically addressed as a separate FOIA exemption. Potential exemptions from third party requests may be found within Exemptions 2, 5, 6, and 7 of the Act depending on the facts of the particular case, but practical application is limited. First party access, however, through the Privacy Act of 1974, provides the individual unrestricted right of access to systems of records subject to the Act.

To address both topics summarily, DCAA does not have the authority to offer promises of confidentiality. As such, no Agency generated record may be routinely withheld as a result of these statements or promises of confidentiality.

Exemption 7 - Investigatory Records

Highlights

- Exemption 7 only applies to law enforcement activities. It does not apply to routine inspections or audits.

- Exemption 7 of the FOIA permits an agency to withhold "records or information compiled for law enforcement purposes, but only to the extent that the disclosure of such law enforcement records or information:

  (a) could reasonably be expected to interfere with enforcement proceedings,

  (b) would deprive a person of a right to a fair trial or an impartial adjudication,

  (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

  (d) could reasonably be expected to disclose the identity of a confidential source including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

  (e) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law or,

  (f) could reasonably be expected to endanger the life or physical safety of any individual."

- Exemption 7(A), interference with an enforcement proceeding, only applies to open cases where release of the records would harm the government's case or show the direction of the investigation.

- The same rationale discussed under Exemption 6 for personal privacy applies also to Exemption 7(C), except that the threshold for finding an invasion of privacy is lower under Exemption 7(C), since the invasion need not be "clearly unwarranted," but only "reasonably be expected" to constitute an unwarranted invasion of privacy.

- Allegers -- those who make allegations but who are not formally granted confidentiality -- are protected under Exemption 7(C).

How are Investigatory and Law Enforcement Records Evaluated?

For a record to be withheld under Exemption 7, it must be compiled for a law enforcement purpose, and its disclosure must create one of the six harmful effects specified in the exemption. The exemption cannot be used to shield entire files, only those records in a file which would cause any of the specified harmful effects. The term "law enforcement" covers criminal, civil, and administrative actions. It includes, for example, inspections that may result in an enforcement action, criminal investigations conducted by the investigative agencies, investigations of alleged wrong doing by DCAA employees conducted by the DoD Office of Inspector General, and EEO investigations.

Exemption 7(A). Records may be withheld if their disclosure "could reasonably be expected to interfere with enforcement proceeding.

Exemption 7(A) applies only to open cases and is intended to protect information unknown to the subject of the investigation, the disclosure of which would impede the investigation or harm the government's case by allowing, for example, those under investigation to hide their wrongdoing, destroy evidence, or intimidate witnesses. To withhold records under Exemption 7(A), prior case law has said that the government must show, by more than conclusory statements, how the particular kinds of records requested would interfere with a pending enforcement action, and must be able to define the scope, direction, and focus of the inquiry. Under the 1986 amendments, the government must define clearly specific harms. In addition, the 1986 amendments added a new section to the FOIA (552(c)) which provides that whenever a request is made which involves access to law enforcement records under Exemption 7(A), "the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section." Section 552(c) applies when:

- the investigation or proceeding involves a possible violation of criminal law; and

- there is reason to believe that:

  the subject of the investigation or proceeding is not aware of its pendency, and

  disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

In other words, an agency must give a "no records" response for the purposes of the FOIA until the subject otherwise becomes aware of the investigation or until its disclosure could not reasonably be expected to interfere with the proceeding by, for example, permitting the subject to evade detection or cover his tracks.

Courts will permit agencies to make generic showings of interference with respect to various categories of records rather than have them justify the withholding of each record on a case-by-case basis. Normally, an agency must list each record withheld by date, author, and subject. However, if this listing would identify the scope of the investigation, DCAA can, group the records by category.

After an investigation is completed, Exemption 7(A) may no longer be used to withhold information, although the other Exemption 7 categories, or other FOIA exemptions, may still be applicable for particular records.

A law enforcement investigation terminates when the decision is made either to issue an enforcement action, or to take no action. For a criminal investigation which has been referred to the Department of Justice, the investigation phase terminates when the grand jury issues an indictment or refuses to indict. If the Department of Justice decides not to prosecute a matter referred to it and returns the case to DCAA, the investigative phase terminates at that time.

Exemption 7(B). Records may be withheld if their disclosure "would deprive a person of a right to a fair trial or an impartial adjudication."

This exemption is used primarily to protect a person from pretrial publicity in a criminal case. It applies only to third party requests for information, and cannot be used against the person who is the subject of the investigation. It is normally used in conjunction with Exemption 7(A), and applies to cases which have been referred by DCAA to the Department of Justice for possible prosecution.

Exemption 7(C). Records may be withheld if their disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy."

The discussion under Exemption 6 applies equally to Exemption 7(C) and requires a balancing of the public interest in disclosure against the degree of the invasion of privacy that would result from disclosure. However, courts have said that "unlike Exemption (6), which permits nondisclosure only when a record portends to clearly unwarranted invasion of personal privacy, Exemption 7(C) does not require a balance tilted emphatically in favor of disclosure", and that "Exemption (7)(C) places a greater emphasis on protecting personal privacy than does Exemption (6)...". Other courts have said that the exemption applies to matters which under normal circumstances "would prove personally embarrassing to an individual of normal sensibilities...".

If a person has been investigated for wrongdoing and has not been charged, the person's identity and other identifying information may be withheld. Similarly, as discussed more fully in connection with Exemption 7(D), agencies will normally withhold the identity of persons who provide information in confidence.

Courts have also drawn a distinction between business and private interests, saying that the privacy exemption does not apply to information regarding professional or business activities, and that business information must be disclosed even if a professional reputation may be tarnished.

Exemption 7(D). Records may be withheld if their disclosure "could reasonably be expected to reveal the identity of a confidential source including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis..."

A confidential source includes any person who "provided information to an agency under an express assurance of confidentiality or in circumstances from which such an assurance could be reasonably inferred." It is not limited to individuals, but can include state, local, and foreign law enforcement agencies as well. It does however, according to the Department of Justice, exclude government employees acting within the scope their responsibilities, although one court has held otherwise. (The identity of a government employee could still be withheld under Exemption 7(C) -- invasion of privacy, or 7(F) -- endanger the life or physical safety of any individual.)

How do Agencies Protect Confidential Sources?

o The staff should exercise extreme caution and a conservative attitude at all times when reviewing records concerning confidential sources. Agencies are obligated to protect the name and other identifying information of a confidential source. When in doubt, the staff should err on the side of deleting any information that may have the potential of identifying the confidential source. The following information normally should be withheld:

Name of the confidential source, social security number, and date of birth;

Home address and home telephone number;

Employee badge number, work phone number, work office location, and job title;

Educational background that would identify the individual, such as date of degree or journeyman certification, school(s) attended, dates attended, degree(s) received, etc.;

Previous employment information that would identify the individual, such as the name of the employer(s), job title(s),' or the dates of employment;

References to date and time of events and meetings which could reasonably lead a knowledgeable person to identify the confidential source;

References to a supervisor, coworkers, or relatives which could lead a knowledgeable person to identify a confidential source;

Date and time of meeting with staff regarding allegations;

Dates of current employment; and

References or initials on forms or documentation which indicate the source of the documentation or information.

o Sometimes deleting the name of a confidential source might in itself identify the confidential source.

o Records provided by a confidential source could, on occasion, also identify the source as the person providing the information. This could happen where the record, such as a memorandum, has a very limited distribution or was available to only a very limited number of persons, among whom was the confidential source.

o Records in the confidential source's own handwriting should be summarized and transcribed into a typed record.

o The subjective evaluation of information for deletion which does not directly identify the confidential source requires the most consideration and evaluation. Evaluation of records and information in this manner is to be approached from a conservative point of view. That is, ask yourself: From the data presented, could someone with access to the company's internal data (time sheets, work logs, personnel files, etc.], have a reasonable degree of success in determining the identity of the confidential course? If so, the information should be deleted.

o Of equal importance is the evaluation of the file content as a whole relation to the potential to compromise confidentiality. When files contain multiple concerns, the collective impact of information not deleted could reveal sufficient information to cause the identity of the confidential source to be ascertained. The following examples show a range of situations which require consideration during the sanitization process:

Is the confidential source part of a limited number of personnel involved in, or aware of, a particular situation?

Has the confidential source been personally involved in identifying a condition to management, especially where such identification resulted in a conflict or disagreement (as indicated in the file) between the confidential source and management?

Has the confidential source filed, or attempted to file, a grievance, EEO, or similar complaint regarding a particular condition?

Has the confidential source initiated nonconformance, corrective, or other documentation regarding the reported condition?

- o Because the factors listed require a detailed knowledge of the investigatory file, it is imperative that the review be conducted by a senior staff person intimately familiar with the entire file and the circumstances of the investigation.

Exemption 7(E). Records may be withheld if releasing them "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions or if such disclosure could reasonably be expected to risk circumvention of the law."

Exemption 7(E) is designed to protect the future effectiveness of investigative techniques and procedures which are generally unknown to the public. Congress has said that it does not apply to routine procedures such as ballistics tests and fingerprinting, but there is actually little case law on what it does cover.

With the 1986 amendments which authorized the withholding of guidelines which, if disclosed, could reasonably be expected to enable a person to evade the law, Congress seems to have codified in Exemption 7(E) the fiction developed by the courts to enable agencies to withhold law enforcement manuals under Exemption 2.

Exemption 7(F). Records may be withheld if their production "could reasonably be expected to endanger the life or physical safety of any individual."

Previously, this exemption was used to protect the identities of FBI agents and other law enforcement personnel. It may be used by DCAA to protect the name of an FBI agent.

The 1986 amendments expanded the scope of the exemption to now include "any individual." Thus, presumably it could now be used to protect, in appropriate circumstances, the names of allegers, confidential sources, and DCAA staff members.

Can DCAA ever Deny the Existence of Agency Records?

The Freedom of Information Reform Act of 1986 established new criteria which permits DCAA under very limited circumstances to claim "no agency records" if they fall within those covered by Exemption 7 of the FOIA. The specific provision is as follows:

Whenever a request is made which involves access to agency records, agencies may, during only such time as that circumstance continues, treat the records as not subject to the requirements when

- o the investigation or proceeding involves a possible violation of criminal law; and
- o there is reason to believe that -

the subject of the investigation or proceeding is not aware of its pendency; and

disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

DCAA will use a "no records" response concerning the existence of records when it receives a third-party request under the FOIA for records regarding allegations by a named individual or records on named individuals who are the subjects of investigations. The exceptions are:

- o when the third-party subject of a request has provided the requester with a written, notarized waiver of his or her privacy rights, which in turn is provided to DCAA with regard to the FOIA request;
- o when DCAA is aware of the third-party subject's death;
- o when DCAA is aware of official public confirmation by the federal government that the third-party subject was or is the subject of a federal investigation related to DCAA activities; or
- o when the third-party has publicly disclosed his or her contacts with DCAA. In the absence of any of the above exceptions, DCAA will claim "no record" concerning the existence of such records pursuant to Exemption 7(C).

What Steps are Necessary to Process Agency Records Subject to Exemption 7(A) of the FOIA?

This section provides procedural guidance related to the processing of Freedom of Information Act requests subject to Exemption 7(A).

Often during the conduct of the search for responsive documents or during the consultative process, FOIA coordinators are advised by members of DCIS, DIS, DOJ, or the FBI that the requested records are part of an ongoing investigation and should be withheld under Exemption 7(A) of the Freedom of Information Act. In the spirit of cooperation, regional directors routinely invoke this exemption and advise the requester of their statutory appeal rights.

The effect of this decision, however, places the Agency in the position of defending the continued withholding of records, during the appellate process and/or in the courts, that it no longer controls and in some cases no longer retains in its possession. Further, DCAA is not a law enforcement agency and as such, has little claim to the use of Exemption 7.

As a matter of policy, requests for records which are to be withheld or partially withheld under Exemption 7(A) of the FOIA shall be referred to the cognizant investigative agency, along with a copy of the responsive records if they are not already in the possession of the investigative organization, for release determination and direct response to the requester.

Who Processes FOIA Requests for DCAA Generated Records subject to Investigation?

Upon notification that DCAA records, requested under the Freedom of Information Act, are exempt from disclosure because they are part of an investigation being conducted by an investigative agency (e.g. DCIS, FBI, etc. . . .), after coordination with the investigative agency, DCAA offices should advise the requester that:

- o the requested records are no longer under the control of the Defense Contract Audit Agency and
- o refer the request to the investigative agency for release determination and direct response to the requester.

Since the records are placed under control by another agency, they then become the sole release authority until control is returned to DCAA. The investigative agency need not take prior possession of the records in order to apply this standard. Requests should not be held in abeyance, pending the outcome of the investigation.

What Steps are Necessary to Process FOIA Requests for Records Subject to Investigation?

This section provides procedures for the processing of Freedom of Information Act requests for records subject to investigation by investigative agencies of the Federal Government. These requests are often subject to excessive processing delays, inadequate documentation, and inconsistent handling by investigative agencies, and are further impaired by negotiation with officials who have little or no practical experience with the statutory requirements of the Act.

In order to address these concerns, we must incorporate "standardized" procedures to facilitate the most efficient method of processing. Essentially, we need to advise investigative agencies of DCAA's requirements, as the recipient of the original request, and provide step-by-step instructions. Once established, the investigative agency will be fully cognizant of DCAA's intentions concerning the specific request and will be able to react accordingly without subjective evaluation. Further, we need to ensure that the request is processed "within FOIA channels" to utilize existing technical expertise both at DCAA and the investigative agency.

Typically, investigative agencies include the Defense Criminal Investigative Service (DCIS) under the DoD Inspector General; Naval Investigative Service (NIS) under the Department of the Navy; Criminal Investigative Command (CIC) under the Department of the Army; and the Air Force Office of Special Investigations (AFOSI). Additional activity may involve the U.S. Attorney's Office under the Department of the Justice.

For the purpose of this requirement, we will assume that you have already determined that the records responsive to the request are, in fact, compiled for law enforcement purposes and are subject to withholding under Exemption 7(A) of the Freedom of Information Act. This determination may be as a result of formal notification from the investigative agency, or verbal documented remarks from an investigative officer or other knowledgeable person.

Given the above conditions, refer copies of the records directly to the "Freedom of Information Act Officer" for the DoD Component over the investigative element (e.g. DoD IG for a DCIS investigation). Simply indicate that "the enclosed records have been determined to be under the control of (for example: DCIS) and are provided for release determination and direct response to the requester." Be sure to include a copy of or identify the source of the status of investigation. You should also provide a copy of your response to the requester; or in the case where the conduct of the investigation is kept confidential; you should advise the FOIA Officer that the requester has not been advised of this referral.

This referral should always be sent registered, return receipt for merchandise, via express mail. Copies of the record or a list of the referred records should be kept with the administrative file as well as the return receipt, PS Form 3811.

Occasionally, the investigative agency will reverse earlier guidance concerning the disposition of the responsive records and return the records to you for processing. Normally, this will take quite some time based on the usual FOIA backlog with investigative agencies. In the event that it does occur, simply process the case under established procedures for routine requests.

In summary, this procedure releases DCAA FOIA Coordinators from the responsibility of negotiating "possession and control" with investigative agencies which is often a long and complicated process. Under the conditions described and established above, we need only determine from a reliable source that responsive records are subject to investigation to consummate the referral to the investigative agency.

Exemption 8 - Records of Financial Institutions Highlights

Highlight

- Exemption 8 of the FOIA permits an agency to withhold information "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

Does DCAA Use this Exemption?

This exemption applies only to the records which financial institutions are required by law or regulation to submit to federal agencies, such as the Federal Deposit Insurance Corporation. It has never been used by DCAA.

Exemption 9 - Oil and Gas Well Data

Highlight

- o Exemption 9 of the FOIA permits an agency to withhold "geological and geophysical information and data, including maps, concerning wells."

Does DCAA Use this Exemption?

This exemption is used to protect oil and gas data. It has never been used by DCAA.

CHAPTER 7

HOW ARE FEES ASSESSED FOR FOIA SEARCHES?

CHAPTER 7 - HOW ARE FEES ASSESSED FOR FOIA SEARCHES?

Highlights

- The 1986 amendments to the FOIA totally revised the previous fee waiver provisions of the FOIA.
- In general, agencies may not charge fees to search for and reproduce the first 100 pages of requests by representatives of educational institutions, noncommercial scientific institutions, and the news media.
- Commercial use requesters must pay search, reproduction and review costs,
- All other requesters are entitled to two hours of search time and the first 100 pages of reproduction free of charge.
- Requesters are entitled to a waiver or reduction in fees if they can show that disclosing the records "is in the public interest because it is likely to contribute significantly to public understanding of the regulations or activities of the government and is not primarily in the commercial interest of the requester."
- The charge to search for or review records is now billed at the following rates:

  Clerical = $12.00 per hour
  Professional/Managerial = $25.00 per hour
  Executive = $45.00 per hour

- The per page cost for reproducing copies of records is 15 cents per page.
- The following chart summarizes the new fee waiver provisions.

Summary of Fee Requirements

Category of Use	Search Fees	Review and Deletion Fees	Duplication Fees (.15/page)
Educational Institution	No charge	No charge	No charge for first 100 pages
Noncommercial Scientific Institution	No charge	No charge	No charge for first 100 pages
News Media	No charge	No charge	No charge for first 100 pages

Commercial Use	Charge	Charge	Charge
General Public and All Others	No charge for first 2 hours	No charge	No charge for first 100 pages

Have Provisions in the Law Affected FOIA Fees?

The 1986 amendments to the FOIA (Pub. L. 99-570) substantially changed the fee waiver provisions of the Act. Under the amendments, the Office of Management and Budget is responsible for promulgating guidelines containing a uniform schedule of fees applicable to all agencies, which were published in the Federal Register on March 27, 1987 (52 FR 10012).

When can Fees be Waived?

Under the standard (established in the 1986 Amendments), a requester is entitled to a waiver or reduction in a fee when furnishing the records "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."

How are Requesters Categorized?

The 1986 Amendments and OMB Guidelines discuss five categories of requesters; the amount of fees to be charged, or waived, for each, varies. The categories are:

- Commercial use requesters,
- Educational institution requesters,
- Noncommercial scientific institution requesters,
- News media requesters and
- All other requesters.

OMB Guidelines define and discuss these groups as follows:

- Commercial use requester - refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, agencies must determine the use to which a requester will put the records requested. Moreover, where an agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, agencies should seek additional clarification before assigning the request to a specific category.

- Educational institution requester - refers to a request from a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education which operates a program or programs of scholarly research.

- Noncommercial scientific institution requester - refers to a request from an institution that is not operated on a "commercial" basis as that term is used above, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

- News media requester - refers to a request from any person actively gathering news for an organization that publishes or broadcasts news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all inclusive In the case of "free-lance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but agencies may also look to the past publication record of a requester in making this determination.

- All other requesters are those who do not fit into one of the above categories, and include requests from members of the general public.

The following section discusses whether the automatic waiver of fees applies for certain categories of requester. However, the OMB guidelines make it clear that it is the "use" of the records which applies, and not just the identity or organization of the requester. As stated in the guidelines:

> Because "use" is the exclusive determining criterion, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a nonprofit organization could make a request that is for a commercial use. Moreover, because "use," not identity, controls, agencies will have to spend more time than they do now in determining what the requester intends to do with the records sought.
>
> Thus, for example, a request from a professor of geology at a State university for records relating to soil erosion, written on letterhead of the Department of Geology, could be presumed to be from an educational institution. A request from the same person for drug information from the Food and Drug Administration is furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on

institutional stationary. Indeed, such a request could reasonably be construed to be a request that is for a commercial use.

The institutional versus individual test would apply to student requests as well. A student who makes a request in furtherance of the completion of a course of instruction is carrying out an individual research goal and the request would not qualify, although the student in this case would certainly have the opportunity to apply to the agency for a reduction or waiver of fees.

For Whom are Fees not Charged?

The 1986 Amendments provide that for educational institutions, noncommercial scientific institutions, and representatives of the news media, there is no charge for search and review and for reproduction of the first 100 pages where the request is not for a commercial use. For all other requesters, including the general public, there is no charge for the first two hours of search time and no reproduction charges for the first 100 pages where the request is not for commercial use.

There are two exceptions to the above rules. First, the new amendments provide that agencies may not collect a fee if the cost of collecting the fee is equal to or greater than the fee itself. OMB guidelines provide that the elements of collecting a fee is "the administrative costs to the agency of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury's special account. These cost elements have been computed by DoD to be $15.00. OMB guidelines state that for purposes of complying with this provision, agencies may only assess fees in excess of the search and duplication fees which are automatically waived. "Thus, if after deducting the various automatic waivers, the total bill remaining is $15.00 or less, no charges are assessed. If the total bill remaining is more than $15.00, the requester is charged the entire amount, including the $15.00.

Second, excluded from those categories of records which an agency has to provide without charge are those sold by an agency which has specific statutory authority to set fees for particular types of records. DCAA does not have such statutory authority. The OMB guidelines state that if records requested under the FOIA are available from federal information sales outlets, such as the National Technical Information Service (NTIS) or the Government Printing Office (GPO) for a fee, the agency may refer the requester to NTIS or GPO; it does not have to provide the records without charge. Thus, DCAA need not provide publications and other records, such as the Contract Audit Manual (CAM), in response to an FOIA request because it is available from GPO.

How much are Fees?

Agencies may charge for the direct cost of duplication, including the salary of the machine operator. The OMB guidelines encourage agencies to establish a standard rate for duplication charges. DCAA charges $.15 per page, a fee which includes the basic rate of pay of personnel time plus 16 percent for fringe benefits, plus the average cost of the reproduction machines, including maintenance charges.

For computer searches, DCAA charges the operator's time and fringe benefits, and may charge for the central processing unit time apportioned to the search. For computer costs, DCAA uses the actual costs billed to the Agency. If a member of the general public is entitled to a waiver of search fees for two hours of search time, DCAA "will deduct it from the total bill or, if the bill does not exceed $15.00, will waive the entire cost.

Can the Scope of a Search be Negotiated with a Requester?

Since many requesters are not familiar with DCAA's organization or records management procedures, FOIA requests frequently tend to be very broad and all encompassing, and could, if followed literally, result in substantial search efforts by the staff. Therefore, if the staff is aware of summary reports or other information readily retrievable which may satisfy the needs of the requester, they should bring this information immediately to the attention of the FOIA Coordinator for use in negotiating the scope of FOIA requests. It is also important for the staff not to overestimate the amount of search time needed to process a request because if requesters find that the staff continually overestimates the search effort required in order to reduce the scope of requests, they will be less likely to compromise and will insist, instead, on a full search.

How is a FOIA Request Processed with an Inadequate Fee Declaration?

This section establishes procedures for processing FOIA requests where the requester has not provided an adequate fee declaration and to clearly define acceptable parameters for adequacy.

Routinely, FOIA requesters provide statements which delineate their commitment to pay applicable fees for processing their requests. Unfortunately, these commitments often do not reflect sufficient detail to begin processing until the cost of processing is generally assessed. Even with the assessment or "cost estimate," the requester must be contacted to determine their degree of willingness to pay.

Examples of inadequate fee declarations are as follows:

> "I am willing to pay all applicable processing fees associated with this request." This offering, although highly cooperative, gives the Agency a blank check to process the request. Requesters normally know very little about the internal operations of the Agency. As such, we are obligated to provide an estimate of the expected fees and charges based on our knowledge of the Agency.
>
> "We will pay all applicable search and duplication fees in connection with our request." The declaration is perfectly sound for an "other use" requester, but in the case of a commercial use requester the word review is conspicuously absent.

> The more sophisticated requester may offer, "I am willing to pay all reasonable (emphasis added) fees associated with my request." The key word here is "reasonable." The requester is reserving the definition of reasonableness for decision at a later date. In essence, it is something less than full commitment.

When these conditions apply, FOIA coordinators should obtain a cost estimate for the processing of the request. The estimate should be provided to the requester who shall be further advised that they have 30 days to respond to the estimate after which the request will be administratively withdrawn. It should also be indicated that the statutory time limit for processing the request will not begin until the issue of their willingness to pay is fully resolved.

Once the requester has agreed to pay the fees in response to your letter, the request should be processed. The key to this method of processing is the commitment. With this commitment, you have a "contract" which, in the case of default, may be processed in accordance with the Debt Collection Act of 1982 (Public Law 97-365). This effort removes the "risk of doing business" and protects the interests of the Agency.

Ideally, a requester will offer to pay all processing fees up to a specified amount. When this does not occur, the cost estimating process will allow FOIA Coordinators the opportunity to determine valid requests, manage workload, and reduce risk of Agency assets. DCAA Form 5410.3 reflects the cost estimate worksheet, developed to assist you in obtaining these figures.

Is the Agency Obligated to Process Documents and Make Them Available for Viewing by the Requester without the Assessment of Fees?

DCAA is certainly within its rights to require a FOIA requester to pay applicable fees, even though the requester indicates a preference to first examine copies of the processed documents in order to ascertain the particular pages he wants to purchase. Otherwise, a FOIA requester could easily frustrate the interest underlying the fee requirement in 5 U.S.C. 552(a)(4)(iv) by not allowing the Agency to "recover" its direct costs (e.g. search, duplication, and review).

However, it is of course within the Agency's discretion to allow a FOIA requester free examination of records, such as entirely nonexempt "original" files or file copies of records "previously processed" for release, where to do so would encourage the requester to limit the volume of records ultimately sought.

Finally, it should be remembered that no fees may be assessed in connection with a requester's examination of those records which are required to be made available for "public inspection" by anyone under subsection (a)(2) of the FOIA.

CHAPTER 8

HOW DOES THE FOIA AFFECT OTHER OPENNESS IN GOVERNMENT LAWS?

CHAPTER 8 - HOW DOES FOIA AFFECT OTHER OPENNESS IN GOVERNMENT LAWS?

Statute	Page
Privacy Act of 1974	75
Government in the Sunshine Act of 1976	78
Federal Advisory Act of 1972	78
Freedom of Information Act Prohibition Against Withholding Information From Congress	79

The Privacy Act Of 1974

Highlights

- o The FOIA applies to all agency records. The Privacy Act applies only to records about individuals maintained in Privacy Act systems of records.
- o A person may request records about himself or herself under either the FOIA or Privacy Act, or both. DCAA will normally give the person as much information as would be available under either Act.
- o DCAA has 17 systems of records, such as personnel records, security files, which contain personal information.
- o DCAA is required by the Privacy Act to maintain only such information about employees as is necessary and relevant for an agency purpose. It is also required to assure that its records about individuals are as accurate, relevant, timely, and complete as necessary to assure fairness.

How do the FOIA and Privacy Acts Differ?

Under FOIA, a person may obtain access to any government record, including records about himself or herself, unless the records fall within one of the nine exemptions to the Act. The Privacy Act, on the other hand, is limited only to records about individuals which are maintained in a "system of records" from which information is retrieved by his or her name or other personal identifier. If the records are not maintained by the agency in a "system of records," the Privacy Act does not apply, and the person would have to seek access to the information under the provisions of the FOIA.

A difficult question arises when access to information in one person's file would affect the personal privacy of another person. For example, one court refused to give the address of minor children to an unmarried father who was paying child support, but who did not have visitation rights, even though the addresses were listed in the father's social security account. Similarly, it is doubtful if DCAA would make available to an employee derogatory information about his or her spouse that is contained in the employee's security file. Courts reason, in these cases, that the information does not pertain to the individual. Of course, if information is misfiled or placed in a person's file by accident, it may clearly be withheld.

What is a System of Records?

A system of records is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some other identifying particular assigned to the individual, such as a social security account number, badge number, fingerprint, or voice print. To be considered a system of records, it is not enough that the records are retrievable by reference to an individual's name if the records are not normally accessed in that manner. Thus, a reading file, chronological file, or any other grouping of records that is not normally accessed by a person's name, even if it is possible to locate a record about an individual by manually searching the file, is not a system of records under the Privacy Act.

Each agency is required to identify and publish its systems of records in the Federal Register, and no new system of records may be established without the agency first notifying Congress and OMB, and announcing the system in the Federal Register. A compilation of all DCAA systems of records may be found in DCAAP 5410.13, Defense Contract Audit Agency Compilation of Privacy Act System Notices. For each system of records, the compilation shows the:

- System name and location,
- Categories of individuals covered,
- Types of records in the system,
- Statutory authority for the system,
- Routine uses of the records, and
- Policies and practices for storing, retrieving, accessing, retaining, and disposing records in the system.

How does the Privacy Act Control Access to Agency Records?

Like the FOIA, the Privacy Act has certain exemptions to its access provisions. Section 552a(k) of the Act provides that the agency may promulgate rules exempting any system of records from the access and certain other provisions of the Act if the records are:

(1) classified,

(2) investigatory material compiled for law enforcement purposes,

(3) maintained in connection with providing protective services to the President,

(4) required by statute to be maintained and used solely as statistical records,

(5) investigatory material compiled solely for the purpose of

determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information,

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process, or

(7) evaluation material used to determine potential for promotion in the armed services.

DCAA has no exempted systems of records. DCAA's policy is to give requesters as much information about themselves as they would be entitled to regardless of whether they request information under the Privacy Act or the FOIA.

Are Personal Records under the FOIA and the Privacy Act the Same?

With regard to the distinction under the FOIA between "agency records" which are subject to the FOIA and "personal records" which are not subject to the FOIA, it should be noted that personal records under the Privacy Act have the same meaning as under the FOIA (see discussion in Chapter 2). Thus, personal records would not normally be available if requested under the Privacy Act.

> "Personal Records" [are], uncirculated personal notes, papers and records which are retained or discarded at the author's sole discretion and over which the DCAA exercises no control or dominion. However, if a "personal record" is shown or transmitted to any other individual, it becomes an agency record subject to the requirements of the Privacy Act. Furthermore, if "personal records" are maintained in the same file as, or commingled with, agency records, there is a presumption that they are agency records also.

(Note: In a 1986 case, the court held that memos which were kept in a supervisor's desk along with official personnel records and which were left behind when the supervisor was assigned to another base were agency records and not personal records).

How much Information about Individuals can Agencies Collect?

Agencies are required to maintain only such information about employees as is relevant and necessary to accomplish an agency purpose. To the extent possible, agencies are also required to collect information directly from the individuals involved and, if an agency form is used to solicit personal information, to provide a Privacy Act Statement. A Privacy Act Statement informs the individual furnishing the information as to (1) the reasons for requesting the information, (2) the authority which authorizes the solicitation of the information, (3) whether disclosure is mandatory or voluntary, (4) how it will be used, and (5) what the consequences are, if any, of not providing the information.

Agencies are also required to maintain their records concerning any individual with such accuracy, relevance, timeliness and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, opportunities, or benefits due to the individual.

When can Agencies Permit Access to Personal Information?

The general rule in the Privacy Act is that no agency shall disclose any record which is contained in a system of records to any person except in response to a written request by, or with the prior written consent of, the individual to whom the record pertains. The Act has 12 exceptions, the first three of which are utilized most frequently by agencies. Records may be disclosed:

- to those officers and employees of the agency who have a need for the records in the performance of their official duties,
- if required pursuant to the FOIA, and
- for any "routine use."

A "routine use" is defined as "any use of a record which is compatible with the purpose for which the record was collected."

Government in the Sunshine Act of 1976

The principal operative provision is that meetings of each federal agency headed by a collegial body of a majority of whose members are appointed by the President with the advice and consent of the Senate shall be open to public observation. The right to observation does not include any right to participate in the agency's deliberations. The Act provides certain exemptions from the open meeting requirement and provides in detail the procedures that the agency must follow to invoke an exemption and close a meeting. (See 5 U.S.C. 552b).

The Department of Defense is not normally subject to this Act.

Federal Advisory Committee Act of 1972

This was enacted to control the number of advisory committees utilized by the Federal government, to open to public scatting the manner in which government agencies obtain advice from the private sector, and to avert the danger of unbalanced membership, especially, industry groups "whose private interests could influence their recommendations. (See 5 U.S.C. appendix 2).

The Department of Defense is not normally subject to this Act. However, the DoD Base Closure Commission was set up under this Act. They have recently been required to release related portions of transcripts under this Act as well as under the Sunshine Act, cited above.

Freedom of Information Act Prohibition on Withholding Information from Congress - Transmittal of Sensitive Documents to Congress

Highlights

- The FOIA specifically provides that the Act may not be used to withhold information from Congress.
- Where records requested by Congress are exempt under the FOIA, Congress is notified of that fact and requested to maintain the records in confidence.
- All Congressional requests for records should be referred to PLD.

DCAA provides documents to Congress not available to the general public only when requested by a committee or subcommittee chairman or ranking minority member which has jurisdiction over DCAA. The agency is not required to provide documents to committees or subcommittees who do not have jurisdiction over DCAA.

Can the FOIA be Used to Withhold Information from Congress?

Section 552(d) of the FOIA specifically provides that "this section is not authority to withhold information from Congress." The only way information can be formally withheld from Congress is through a claim of Executive Privilege.

Members of Congress, Members of Congressional Committees, and their staffs often request copies of classified and unclassified sensitive documents. Procedures have been established by the PLD to assure that these Congressional requests are treated uniformly and responded to promptly.

APPENDIX A

THE FREEDOM OF INFORMATION ACT

5 U.S.C. 552

AND

32 CFR PART 290

DCAA FREEDOM OF INFORMATION ACT PROGRAM

THE FREEDOM OF INFORMATION ACT

5 U.S.C. §552

As Amended

552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public-

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying--

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public; unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if--

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that-

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section-

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: Provided, that the court's review of the matter shall be limited to the record before the agency.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) [Repealed]

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall-

(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request-

(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(b) This section does not apply to matters that are-

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an

agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological or geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and--

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include-

(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding

records or an explanation of why disciplinary action was not taken;

(5) a copy of every rule made by such agency regarding this section;

(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term "agency" as defined in section 551 (1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

Part 290--Defense Contract Audit Agency Freedom of Information Act Program

§ 290.1 Purpose.

This part is issued to assign responsibilities and establish policies and procedures for a uniform DCAA Freedom of Information Act (FOIA) Program pursuant to the provisions of 5 U.S.C. 552, as amended, and as supplemented by DoD Directive 5400.7 (32 CFR Part 285) and DoD 5400.7-R (32 CFR Part 286).

§ 290.2 Cancellation.

DCAA Instruction 5410.8, DCAA Freedom of Information Act (FOIA) Program, dated 27 August 1981 and DCAA Regulation 5410.5, Availability to the Public of Defense Contract Audit Agency (DCAA) Information, dated 14 April 1987 are superseded.

§ 290.3 Applicability and scope.

This rule shall apply to all DCAA organizational elements, and is to govern written responses by DCAA officials for requests from members of the public for permission to examine, or to be provided with copies of DCAA records.

§ 290.4 Policy.

(a) It is the policy of DCAA to promote public trust by making the maximum amount of information available to the public, upon request, pertaining to the operation and activities of the Agency.

(b) Allow a requester to obtain records from the Agency that are available through other public information services without invoking the FOIA.

(c) Make available, under the procedures established by 32 CFR Parts 285 and 286, those records that are requested by a member of the general public who cites the FOIA.

(d) Answer promptly all other requests for information and records under established procedures and practices.

(e) Release records to the public unless those records are exempt from disclosure as prescribed by 5 U.S.C. 552, as amended and 32 CFR Part 285 and implemented by 32 CFR Part 286.

(f) Process requests by individuals for access to records about themselves under the "Privacy Act" procedures as implemented by DoD Directive 5400.11 (32 CFR Part 286a) or procedures outlined in 5 U.S.C. 552, as amended, and 32 CFR Part 286.

(g) Refer incoming requests for audit reports to the appropriate activity for release determination. The requester shall then be notified in writing of the referral.

(h) Coordinate incoming requests for non-DCAA documents with the originator of the document to determine if the originator will make the release determination. If a referral occurs the requester shall be notified in writing of the referral.

§ 290.5 Definitions.

The terms used in this rule, with the exception of the following, are defined in 32 CFR Part 286.

(a) Appellate Authority. The Assistant Director, Resources, or his designee.

(b) Initial Denial Authorities (IDAs). The regional directors, and the Records Administrator, have been delegated the authority by the Director, DCAA, to make initial determinations as to the releasability of DCAA records to the public, including Defense contractors. This authority may not be redelegated. Requests for records shall be processed as outlined in this rule.

§ 290.6 Responsibilities.

(a) Headquarters. (1) The Assistant Director, Resources is responsible for:

(i) The overall Agency-wide administration of the DCAA FOIA Program, through the Information Resources Management Branch (CMR), Records Administrator, to ensure compliance with the policies and procedures that govern the program.

(ii) Acting as the designee for the Director, DCAA, serving as the sole appellate authority for appeals to decisions of respective IDAs.

(iii) Advising the Assistant Secretary of Defense (Public Affairs) (ASD(PA)) of cases of public interest, particularly those on appeal, when the issues raised are unusual or precedent setting, matters of disagreement among DoD components, are of concern to agencies outside the Department of Defense, or may otherwise require special attention or guidance.

(iv) Advising the ASD(PA) and the Executive Officer, DCAA, concurrent with the denial of a request or an appeal, when circumstances suggest a news media interest.

(v) Conferring with the General Counsel; the Assistant Director, Operations; and the Assistant Director, Policy and Plans, on the desirability of reconsidering a final decision to deny a record if that decision becomes a matter of special concern because it involves either an issue of public concern or DoD-wide consequences.

(vi) Accomplishing program overview, in cooperation with the General Counsel, to ensure coordinated guidance to components, and to provide the means of assessing the overall conduct of the Agency's FOIA Program.

(vii) Directing required studies, and surveys to facilitate the implementation of Title 5, U.S.C. section 552, as amended, and to evaluate the FOIA program in DCAA.

(viii) Responding to corrective action recommended by the Special Counsel of the Merit System Protection Board for arbitrary or capricious withholding of records by designated employees of the Agency.

(ix) Submitting the Agency's annual FOIA report as prescribed by 32 CFR Part 286.

(2) The Records Administrator, (CMR) is responsible for:

(i) Making the initial determination for Headquarters, DCAA, on the release of Agency records to members of the public.

(ii) Coordinating with the Agency's General Counsel on proposed denials of records.

(iii) Advising the Assistant Director, Resources; General Counsel; and/or the Executive Officer; as appropriate, when cases are of particular interest; are matters of disagreement among DoD Components or DCAA organizational elements; are of concern to agencies outside the Department of Defense; have news media interest; or require special attention or guidance.

(iv) Establishing and maintaining a control system for assigning FOIA case numbers to FOIA requests received by Headquarters and regional offices. This system shall be designed to ensure compliance with the FOIA, and will not only provide controls to maintain responsiveness in handling requests but will also employ methods to ensure accurate cost accounting reporting for the assessment of fees.

(v) Maintaining a record of FOIA requests received by Headquarters. This record is to contain the requester's identification, the date of the request, type of information requested, and type of information furnished. This record will be maintained and disposed of in accordance with DCAA records maintenance and disposition regulations and schedules.

(vi) Preparing and submitting the Agency's annual FOIA Report prescribed by 32 CFR Parts 285 and 286, as well as preparing and submitting, as required, any additional information requirements.

(vii) Preparing and submitting the bi-monthly FOIA status report.

(viii) Issuing DCAA FOIA regulations and any other discretionary instructions or guidance required to ensure timely and uniform implementation of the FOIA program.

(ix) Providing Agency-wide policy guidance pertaining to the overall conduct of the Agency's FOIA program.

(x) Publishing in the Federal Register any instructions necessary for the administration of the FOIA program. Information specified in paragraph (a)(1), of 5 U.S.C. 552, as amended, shall be published in accordance with DoD Directive 5400.9.

(xi) Developing and conducting training on the provisions of this part, 32 CFR Parts 285 and 286, and 5 U.S.C. 552, as amended, for those individuals who implement the FOIA.

(xii) Making available for public inspection and copying in an appropriate facility or facilities, in accordance with rules published in the Federal Register, the records specified in paragraph (a)(2) of 5 U.S.C. 552, unless such records are published and copies are offered for sale. Maintain and make available for public inspection and copying current indices of these records.

(3) The Executive Officer shall serve as the coordinator for the release of information to the news media.

(4) The General Counsel is responsible for:

(i) Ensuring uniformity is maintained in the legal position, and the interpretation of 5 U.S.C. 552, as amended, and 32 CFR Parts 285 and 286, as well as this rule.

(ii) Consulting with the General Counsel, Department of Defense, on final denials that are inconsistent with decisions of other components, involve issues not previously resolved, or raise new or significant legal issues of potential significance to other Government agencies.

(iii) Providing advice and assistance to the Assistant Director, Resources; Regional Directors; and the Regional FOIA Coordinators, through the Records Administrator, CMR, as required, in the discharge of their responsibilities.

(iv) Coordinating FOIA litigation with the Department of Justice.

(v) Coordinating on Headquarters denials of initial requests.

(5) Heads of Principal Staff Elements are responsible for:

(i) Reviewing all regulations or other policy and guidance issuances for which they are the proponent to ensure consistency with the provisions of this rule.

(ii) Ensuring that the provisions of this rule are followed in processing requests for records.

(iii) Forwarding to the Records Administrator, CMR, any FOIA request received directly from a member of the public, so that the request may be administratively controlled.

(iv) Ensuring the prompt review of all FOIA requests received from CMR, and when required, coordinating those requests with other organizational elements.

(v) Providing recommendations to CMR regarding releasability of DCAA records to members of the public, along with the releasable documents and the completed DD Form 2086, "Record of Freedom of Information (FOI) Processing Cost," for every FOIA request to which they respond.

(vi) Providing the appropriate documents, along with a written justification to CMR for the denial, in whole or in part, of a request for records. Those portions to be excised should be highlighted in colored pen or pencil, and the specific exemption or exemptions which provides the basis for denying the record(s) should be identified.

(b) Regional Directors are responsible for:

(1) Making the initial determination pertaining to the releasability of DCAA records to members of the public. This authority cannot be delegated.

(2) Designating an individual to serve as the Regional FOIA Coordinator.

(3) Delegating signature authority for FOIA correspondence which is considered only to be routine in nature, e.g., referrals and the release of information.

(4) Issuing regional instructions that are consistent with the policies and procedures defined in this rule.

(5) Directing, when required, the necessary surveys or studies to further facilitate the implementation of activities related to the DCAA FOIA Program.

(6) Providing, in coordination with the Records Administrator, CMR, the appropriate training on the provisions and requirements of this rule for those individuals who are responsible for implementing the FOIA program.

(c) Regional FOIA Coordinators are responsible for:

(1) Establishing and maintaining a control system to ensure proper accountability and processing of FOIA requests.

(2) Contacting the Records Administrator, CMR for a FOIA case number upon receipt of a FOIA request.

(3) Providing, by telecopier to the Records Administrator, CMR, a copy of the request containing the FOIA case number, date received, and the suspense date.

(4) Communicating with the Records Administrator, CMR, on those FOIA requests which are sensitive in nature, to maintain uniformity and consistency in the Agency's FOIA program.

(5) Ensuring all interim or final responses to requesters are made within the prescribed timeframe of 10 workdays.

(6) Notifying the requester, within the 10 day suspense period, that the request is being referred to a contracting activity.

(7) Submitting, upon completion of the request, DCAA Form 5410.2, "Statistical Report of FOIA Request," (Appendix B), accompanied by:

(i) Copies of all correspondence relating to the request, and

(ii) DD Form 2086 properly annotated to show the correct processing costs.

(8) Conducting, when necessary, training on the FOIA program to the FAOs.

(d) Managers, Field Audit Offices (FAOs) are responsible for:

(1) Overall management and administration of the FOIA program within organizations under their cognizance.

(2) Ensuring that the appropriate FOIA Coordinator promptly receives all incoming FOIA requests.

§ 290.7 Procedures.

(a) The following are authorities and procedures for processing material in accordance with the FOIA. DCAA personnel shall comply with the provisions of the FOIA, 5 U.S.C. 552, as amended, and this rule.

(b) Public inspection and copying. (1) 5 U.S.C., Section 552(a)(2) requires agencies to make available for public inspection and copying those materials discussed in 5 U.S.C. 552, 32 CFR Part 286, and this rule.

(2) DCAA documents pertaining to contract audit are disseminated to staff under the Quarterly Index of DCAA Numbered Publications and Memorandums (DCAA Instruction 5025.2).

(3) The numbered publications discussed in the previous paragraph are frequently amended or supplemented by interim numbered memorandums pending formal revision to the numbered publication. Additionally, numbered memorandums are issued as auxiliary illustrations and managerial reminders. Such staff memorandums are indexed in the Quarterly Index of DCAA Numbered Publications and Memorandums. Memorandums issued by Headquarters are referred to as Memorandum for Regional Directors (MRDs).

(4) The DCAA Quarterly Index of Numbered Publications and Memorandums is not published in the Federal Register because of the volume, and the limited applicability to the general public. However, it is available upon request at no cost to the general public.

(5) DCAA Headquarters and each of the six regional offices will publish a quarterly index of the documents referenced previously. Documents that are generally available to the public will be maintained in the reading rooms of the Headquarters, regional offices, FAOs, and the Defense Contract Audit Institute.

(6) Documents identified in the DCAA Headquarters or regional quarterly indices are available to the public from DCAA or the Superintendent of Documents. However, in some instances, it may be necessary to deny all or portions of a document if disclosure of information in the document would constitute a clearly unwarranted invasion of personal privacy. In such cases, the requester will be advised fully in writing of the rationale for invoking the exemption.

(c) Requests for the examination or copies of records. (1) Members of the public may make written requests for copies of DCAA records or for permission to examine such records during the normal business hours. Such requests must be in writing and expressly indicate that it is a request under the Freedom of Information Act, 5 U.S.C., section 552, or this rule. These requests should be submitted directly to the appropriate DCAA component listed in Appendix C of this rule. If the appropriate component is either unknown or cannot be ascertained, and the record is likely to be in the possession of DCAA, the request may be submitted to Headquarters, DCAA, ATTN: CMR, Cameron Station, Alexandria, Virginia 22304-6178.

(2) When submitting requests, requesters should:

(i) Identify each record sought with sufficient detail to permit easy access. Information as to where the record originated, subject, date, number, or any other identifying particulars should be provided whenever possible. DCAA elements receiving requests which do not reasonably describe the record requested will advise the requester accordingly. Generally, a record is not reasonably described unless the requester provides information permitting an organized, nonrandom search of DCAA files and/or information systems. In providing descriptions based on events, the requester must provide information which permits DCAA components to infer the specific record sought.

(ii) Identify all other Federal agencies subject to the provisions of the Freedom of Information Act to which the request has been sent. This will reduce both processing and coordination time between agencies, as well as redundant referrals.

(iii) Provide a statement of their willingness to pay assessable charges cited under the schedule of fees in 32 CFR Part 286. The statement must include a specific monetary amount if the assessable fees are likely to exceed the minimum amount specified by 32 CFR Part 286 or a specific justification for any waiver or reduction of fees sought based on public interest in release or disclosure. Requesters should also substantiate any claim for the assessment of fees under a specific fee category as explained in 32 CFR Part 286. DCAA components will notify requesters of deficiencies in fee declarations, and provide them the opportunity to amend initial declarations. Determinations on the adequacy of requester fee declarations are not subject to appeal unless:

(A) The DCAA component has denied a specific request for the assessment of fees under one of the categories established in 32 CFR Part 286 or

(B) Has denied a request for the waiver or reduction of fees in the public interest.

(3) When a DCAA component has no records responsive to a request, the requester will be notified promptly. In cases where the request has been misdirected and the component is aware of the appropriate FOIA respondent, the component shall refer the request to the appropriate DCAA component or other agency through FOIA channels, and notify the requester of the referral. The 10 working day period allowed for responding to requests will not begin until the DCAA component having the responsive records receives a request complying with procedural requirements of this rule, including statements on the payment of fees.

(4) The provisions of the FOIA are intended for parties with private interests. Officials seeking documents or information on behalf of foreign governments, other Federal agencies, and state or local agencies should be encouraged to employ official channels. The release of records to individuals under the FOIA is a public release of information. DCAA components will consider FOIA requests from such officials as made in a private, rather than official capacity, and will make disclosure and fee determinations accordingly.

(d) Referrals. (1) Records originating in or based on information obtained from other Federal agencies subject to the FOIA may be referred to that agency. In processing FOIA requests for such records, DCAA components, after coordinating with the originating agency, will refer the request, along with a copy of the responsive records in its possession, to that agency for direct response. The requester is to be notified of the referral.

(2) The Director, DCAA, has delegated to the regional directors and Records Administrator, CMR the authority to make initial determinations as to the release of DCAA records to the public, including Defense contractors. This authority may not be redelegated. Therefore, requests for records should be processed as follows:

(i) Headquarters Offices, including DCAI, Technical Services Center, Field Detachment, and PLA/JLA, shall promptly refer all requests for DCAA records to the Records Administrator, Headquarters, DCAA, ATTN: CMR, Cameron Station, Alexandria, VA 22304-6178.

(ii) Field Audit Office (FAOs) shall promptly refer all requests for DCAA records to the cognizant regional director.

(3) Referral of audit reports. Audit reports prepared by DCAA are prepared for the use of the contracting officers, and their release should be at the

discretion of the contracting activity. Therefore, any FOIA request for audit reports should be referred to the cognizant contracting activity and the requester notified of the referral. Initial Denial Authorities shall process requests for audit reports as follows:

(i) Defense Logistics Agency (DLA). If the cognizant contracting officer is an official of DLA, the request will be referred to the appropriate Defense Contract Administration Services Region or buying center. Since DLA contracting officers do not have initial denial authority, this avoids a second referral action and unnecessary delay in responding to the request. (Refer to 32 CFR Part 286, Appendix B, for a listing of DoD Component addresses).

(ii) United States Air Force (USAF). If the cognizant contracting officer is an USAF official, the request will be referred to the appropriate USAF Command. Since USAF contracting officers do not have initial denial authority, this avoids a second referral action and unnecessary delay in responding to the request. (Refer to 32 CFR Part 286, Appendix B for a listing of DoD Component addresses).

(iii) Army Materiel Command. If the cognizant contracting officer is a Army Materiel Command official, the request will be referred to: Freedom of Information Officer, Headquarters, Army Materiel Command, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001.

(iv) Others. All other requests for audit reports shall be referred to the address of the cognizant contracting officer. Referral letters should provide the name and address of the contracting officer, and as much information as possible to assist in preparing a timely reply to the requester.

(4) Referral of work papers. When a request seeks workpapers, the cognizant contracting officer must furnish a notice of disposition to the appropriate activity pertaining to the releasability of the audit report. The notice of disposition will then be used to determine releasability of the workpapers.

(5) All other requests should be directed to the appropriate Regional Director, if known. When the location of the record is not known, the request should be directed to the Records Administrator, CMR.

(e) Time limits. DCAA components are to respond promptly to requesters comply with the procedural requirements outlined in this rule.

(1) Upon receipt of a properly submitted FOIA request, DCAA components should contact the Records Administrator, CMR for a FOIA case number. IDAs should: (i) Locate and assemble responsive records; (ii) Determine releasability under the provisions of this rule; (iii) Determine the appropriate fees to be charged, and (iv) Advise the requester accordingly. Initial determinations on either the release or denial of records, and notice to requesters, must be provided within 10 working days following receipt of the request by the cognizant component.

(2) In certain cases, IDAs may need to exercise an extension to the normal 10 working day period cited above. IDAs are to notify the requester, within the initial 10 working day period, of the extension, the circumstances necessitating it, and the anticipated date of a determination. Approved extensions are not to exceed 10 working days, and all extensions should be indicated on DCAA Form 5410, sections 10 and 11. Circumstances where such extensions may be approved include:

(i) The record(s) sought are geographically located at places other than the component processing the request.

(ii) The request requires the collection and review of a substantial number of records.

(iii) The disclosure determination requires consultation with another DCAA component or agency with a substantial interest.

(3) As an alternative to the previously mentioned, DCAA components may seek informal agreements with requesters for extensions in unusual circumstances when time limits become an issue in the Component's response to the request.

(4) Misdirected requests should be referred within 10 working days to the proper agency or DCAA component through FOIA channels, and the requester notified of the referral. The 10 working day period allowed for responding to requests will not begin until the DCAA component having the responsive records receives the request.

(f) Initial disclosure determinations. (1) Initial determinations to make records available may only be made by those IDAs designated in this rule. When a decision is made to release records in response to a FOIA request, DCAA components will promptly make the records available to the requester. When the request is for the examination of releasable records, DCAA components will advise the requester when and where he or she may appear. Examinations will be held during normal business hours. If a record is not provided in response to a FOIA request, the IDA will advise the requester, in writing, of the rationale for not providing the record.

(2) IDAs should consult the Executive Officer, prior to releasing records on matters considered newsworthy or when releasing records to media representatives. Copies of all released material of this nature should be submitted to the Executive Officer.

(3) The following reasons are provided for not releasing a record in response to a FOIA request:

(i) The information or item requested is not a record within the meaning of the FOIA in accordance with 5 U.S.C. 552, as amended, 32 CFR Parts 285 and 286, and this rule.

(ii) The record has not been sufficiently described to enable DCAA to locate it by conducting a reasonable search.

(iii) The requester has failed to comply with procedural requirements, including agreements to pay assessable fees, imposed by 5 U.S.C. 552, as amended, 32 CFR Part 286, and this rule.

(iv) DCAA determines through knowledge of its files and reasonable search efforts that it neither controls nor possesses the requested record or that the requested record does not exist.

(v) The request is withdrawn by the requester.

(vi) The request is transferred to another DCAA component or agency.

(g) Denials. (1) A record in the possession and control of DCAA may be withheld only when the record falls within one or more of the nine categories of records exempt from mandatory disclosure under the FOIA, and the use of discretionary authority to release the record is determined to be unwarranted (see 32 CFR Part 286).

(2) Although exempt portions of records may be denied, nonexempt portions must be released to the requester when the meaning of these portions is not distorted by the deletion of denied portions, and when it can reasonably be assumed that the excised information could not be reconstructed. When a record is denied in whole, based on distortion or reconstruction potential, the IDA will prepare a response advising the requester of the determination, and the response will specifically state that it is not possible to reasonably segregate meaningful portions for release.

(3) When a request for a record is denied in whole or in part, the IDA will inform the requester in writing of the specific exemption(s) on which the denial is based and explain the determination in sufficient detail to permit the requester to make a decision concerning appeal. The determination will also inform the requester of his or her appeal rights. All appeals should be made within 60 calendar days from the date of the initial denial, contain the reasons for the requester's disagreement with the determination, and be addressed to the Assistant Director, Resources, Headquarters, DCAA, Cameron Station, Alexandria, VA 22304-6178.

(4) Records or portions of records which have been previously released become part of the public domain, and cannot be denied thereafter.

(h) Administrative appeals of denials. (1) If the IDA declines to provide a record because he or she considers it exempt, that decision may be appealed by the requester, in writing, to the Assistant Director, Resources, DCAA. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. Appeal procedures also apply to the disapproval of a request for waiver or reduction of fees. A "no record" finding may not be appealed, although the requester may ask the Agency to search other files or the requester may provide more detailed identification to facilitate another search. Records which are denied should be retained during the time permitted for appeal.

(2) IDAs shall advise the requester that an appeal should be filed so that it reaches the designated appellate authority no later than 60 calendar days after the date of the initial denial letter. At the conclusion of this period, except for good cause shown as to why the appeal was not timely, the case may be considered closed; however, such closure does not preclude the requester from filing litigation for denial of his appeal. If the requester has been provided a series of determinations for a single request, the time for appeal will begin on the date of the last determination of the series.

(3) Final determinations normally shall be made within 20 working days of receipt of an appropriately submitted appeal.

(i) Delay in responding to an appeal. (1) When additional time is required to respond to the appeal for the reasons outlined in paragraph 290.7(e)(2), the final determination may be delayed for the number of working days (not to exceed 10 days) that were not utilized as additional time for responding to the initial request. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in paragraph 290.7(e)(2), they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. DCAA shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing a complaint shall be forwarded to the Department of Justice.

(2) When the Assistant Director, Resources, DCAA, makes a determination to release all or a portion of the records on appeal, the records shall be made available promptly to the requester after compliance with procedural requirements, such as payment of fees. The final denial of a request will be made in writing, explain the exemption(s) invoked, advise that the material being denied does not contain meaningful portions that are reasonably segregable, and also advise the requester of the right of judicial review.

(j) Judicial action. A requester will be deemed to have exhausted his administrative remedy after he has been denied the requested record by the Assistant Director, Resources, or when the Agency fails to respond to his request within the time limits prescribed by 32 CFR Part 286 and this rule. The requester may then seek an order from a U.S. District Court in:

(1) The district in which he resides or has his principal place of business;

(2) The district in which the record is situated; or

(3) In the U.S. District Court for the District of Columbia, enjoining the Agency from withholding the record and ordering its production.

§ 290.8 Fees.

(a) Fees shall be determined in accordance with the Department of Defense fee schedule (32 CFR Part 286, Subpart F). Fees reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which is permitted by the FOIA. Fees are subject to limitations on the nature of assessable fees based on the category of the requester established in 32 CFR Part 286; statutory and automatic waivers based on the category determination and cost of routine collection; and either the waiver or reduction of fees when disclosure serves the public interest.

(b) Fees will not be charged when direct costs for a FOIA request are less than the automatic fee waiver threshold specified in 32 CFR Part 286, regardless of category.

(c) Fee assessment. In order to be as responsive as possible to FOIA requests, DCAA components should adhere to the following when assessing fees;

(1) Evaluate each request to determine the requester category and adequacy of the fee declaration. An adequate declaration requires a willingness by the requester to pay fees in an amount equal to, or greater than, the assessable charges for the request.

(2) Provide requesters an opportunity to amend inadequate fee declarations and provide estimates of prospective charges when required. When a requester fails to provide an adequate declaration within 30 days after notification of a deficiency, the request for information will be considered withdrawn.

(3) A requester's claims for assessment of fees under a specific category will be carefully considered. The IDA may require a requester to substantiate a claim for assessment under a claimed category. In the absence of requester claims, the IDA will determine the category into which a requester falls, basing its determination on all available information.

(4) When a DCAA component disagrees with a requester claim for fee assessment under a specific category, the IDA will provide the requester with written determination indicating the following:

(i) The requester should furnish additional justification to warrant the category claimed;

(ii) A search for responsive records will not be initiated until agreement has been attained relative to the category of requester.

(iii) If further category information has not been received within a reasonable period of time, the component will render a final category determination; and

(iv) The determination may be appealed to the Assistant Director, Resources, within 60 calendar days of the date of the determination.

(d) Components may not require advance payment of fees 32 CFR Part 286. However, when a DCAA component determines that allowable charges are likely to exceed the ($250) amount specified in 32 CFR Part 286, the component may require a provisional payment in an amount up to the full estimated charges. Provisional payments may not be required for requests with estimated fees of the amount specified in 32 CFR Part 286 or less.

(e) Where a requester has previously failed to pay a fee charged within 30 calendar days from the date of billing, DCAA components may require the requester to pay the full amount due, plus any applicable interest or demonstrate satisfaction of the debt, and to make an advance payment of the full amount of estimated fees, before processing begins on a new or pending request.

(f) The administrative time limits for responding to a request will begin only after the component has received an adequate declaration from the requester stating a willingness to pay fees, and satisfaction that all outstanding debts have been paid.

(g) DCAA components can bill requesters in accordance with 32 CFR Part 286 for services provided in responding to a request. Payment of fees may be made by personal check, bank draft drawn on a U.S. bank, or by U.S. Postal money order. All payments of this type are to be made payable to the U.S. Treasurer.

(h) Aggregating requests. Occasionally, a requester may file multiple requests at the same time, each seeking portions of a document or documents, solely to avoid payments of fees. When a component reasonably believes that a requester is attempting to do so, the component may aggregate such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. In no case may components aggregate multiple requests on unrelated subjects from one requester.

(i) Fee waivers. (1) The determination to waive fees is at the discretion of IDAs designated in this rule in accordance with 5 U.S.C. 552 and 32 CFR Part 286. When direct costs for a FOIA request total the automatic fee waiver threshold specified in 32 CFR Part 286, or is less, fees shall be waived automatically for all requesters, regardless of category.

(2) Documents will be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters listed in 32 CFR Part 286, when the IDA determines that a waiver or reduction of fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations of DCAA, and is not primarily in the commercial interest of the requester. DCAA components should refer to 32 CFR Part 286 for factors to consider in applying fee waivers due to public interest. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the question of whether to charge or waive the fee cannot be clearly resolved, components should rule in favor of the requester.

§ 290.9 Information/reporting requirements.

The reporting requirements for this part are set out in 32 CFR 286.41. Those requirements have been assigned Report Control Symbol DD-PA(A)1365.

Appendix A to Part 290--DCAA Headquarters and Regional FOIA Processing

Procedure Charts

TABULAR OR GRAPHIC MATERIAL SET AT THIS POINT IS NOT DISPLAYABLE

Appendix B to Part 290--DCAA Form 5410-2(R)

TABULAR OR GRAPHIC MATERIAL SET AT THIS POINT IS NOT DISPLAYABLE

Appendix C to Part 290--DCAA Organization and Mission

(a) Purpose. This section implements 5 U.S.C. 552 by describing the central and field organizations of DCAA.

(b) Origin and authority. DCAA was established by the Secretary of Defense under Department of Defense (DoD) Directive 5105.36 and began operating on July 1, 1965. Its Director reports to the Comptroller of the Department of Defense.

(c) Objective. Assist in achieving the objective of prudent contracting by providing DoD officials responsible for procurement and contract administration with financial information and advice on proposed or existing contracts and contractors, as appropriate.

(d) Mission. (1) DCAA performs all necessary contract audit for DoD, and provides accounting and financial advisory service regarding contracts to all DoD components responsible for procurement and contract administration. These services are provided in connection with negotiation, administration, and settlement of contracts and subcontracts. It also furnishes advisory contract audit service to a number of other government agencies under agreements between DoD and such agencies.

(2) DCAA audits contractors' and subcontractors' accounts, records, documents, and other evidence; systems of internal control, accounting, costing, estimating, and general business practices and procedures to give advice and recommendations to procurement and contract administration personnel on:

(i) Acceptability of costs incurred under cost, redetermination, incentive, and similar type contracts;

(ii) Acceptability of estimates of costs to be incurred as represented by contractors incident to the award, negotiation, and modification of contracts; and

(iii) Adequacy of contractors' accounting and financial management systems and estimating procedures. DCAA also performs post-award audits of contracts for compliance with the provisions of Pub. L. 87-653 (Truth in Negotiations), and reviews contractor compliance with the Cost Accounting

Standards.

(3) DCAA assists responsible procurement or contract administration activities in their surveys of the purchasing-procurement systems of major contractors; and cooperates with other DoD components on reviews, audits, analyses, or inquiries involving contractors' financial positions or financial and accounting policies, procedures, or practices. DCAA also maintains liaison auditors at major procuring and contract administration offices and provides assistance in the development of procurement policies and regulations.

(e) Composition. (1) DCAA consists of seven major organizational components: a Headquarters and six regions. The six regional offices manage over 400 field audit offices (FAOs) and suboffices located throughout the United States and overseas. An FAO is identified as either a branch office or a resident office. Suboffices are established by regional directors as extensions of FAOs when required to furnish contract audit service more economically. A suboffice is dependent on its parent FAO for release of audit reports and other administrative support.

(2) The Headquarters located at Cameron Station, Alexandria, Virginia consists of:

(i) The Director who exercises worldwide direction and control of DCAA.

(ii) The Deputy Director who serves as principal assistant to the Director and acts for the Director in his absence.

(iii) The Assistant Director, Operations, authorized to act for the Director and Deputy Director in their absence, is responsible for staff functions related to audit management, and technical audit programs, supervises the Technical Services Center in Memphis, Tennessee and the procurement/contract administration liaison offices.

(iv) The Assistant Director, Policy and Plans, is responsible for audit policy and procedures and related liaison functions, and supervises the Defense Contract Audit Institute in Memphis, Tennessee.

(v) The Assistant Director, Resources, is responsible for the programs and procedures related to the management and administration of resources required to support the audit mission.

(vi) The General Counsel provides legal and legislative advice to the Director and all members of the Agency staff.

(vii) The Executive Officer performs a variety of special projects and assignments for the Director and Deputy Director.

(viii) The Special Assistant for Quality Control reviews the Agency's compliance with established audit quality control standards, policies, and procedures and other internal control requirements.

(3) Regional offices are located in Marietta, GA; Waltham, MA; Irving, TX; Los Angeles, CA; Philadelphia, PA; and San Francisco, CA. Regional directors direct and administer the DCAA audit mission, and manage personnel and other resources assigned to the regions; manage the contract audit program; and direct the operation of FAOs within their region. Principal elements of regional offices are the Regional Director, Deputy Regional Director, Regional Audit Managers, Regional Special Programs Manager, and Regional Resources Manager.

(4) A resident office is established at a contractor's location when the amount of audit workload justifies the assignment of a permanent staff of auditors and support staff. A resident office may also perform procurement or contract administration liaison functions.

(5) A branch office is established at a strategically situated location within the region, responsible for performing all contract audit service within the assigned geographical area, exclusive of contract audit service performed by a resident or liaison office within the area. A branch office may also perform procurement or contract administration liaison functions.

(6) If requested, a DCAA liaison office is established at a DoD procurement or contract administration office when required on a full-time basis to provide effective communication and coordination among procurement, contract administration, and contract audit elements. Liaison offices assist in effective utilization of contract audit services.

Defense Contract Audit Agency Offices and FOIA Points of Contact

Headquarters, DCAA, ATTN: Records Administrator (CMR), Cameron Station, Alexandria, VA 22304-6178

DCAA Western Region, ATTN: FOIA Coordinator, 450 Golden Gate Avenue, San Francisco, CA 94102-3563

*DCAA Southwestern Region, ATTN: FOIA Coordinator, 16700 Valley View Avenue, Suite 300, La Mirada, CA 90638-5830

DCAA Eastern Region, ATTN: FOIA Coordinator, 805 Walker Street, Suite 103, Marietta, GA 30060-2731

DCAA Central Region, ATTN: FOIA Coordinator, 5615 High Point Drive, Suite 701, Irving, TX 75038-2414

DCAA Northeastern Region, ATTN: FOIA Coordinator, Waltham Federal Center, 424 Trapelo Road, Waltham, MA 02154-6397

DCAA Mid-Atlantic Region, ATTN: FOIA Coordinator, 600 Arch Street, Room 4400, Philadelphia, PA 19106-1604

* Corrected address. Published address is 2500 Wilshire Boulevard, Suite 405, Los Angeles, CA 90057-4366.

APPENDIX B

THE PRIVACY ACT OF 1974

5 U.S.C. 552a

THE PRIVACY ACT OF 1974

5 U.S.C. §552a

As Amended

552a. Records maintained on individuals

For purposes of this section--

(a) Definitions.

(1) the term "agency" means agency as defined in section 552(e) of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use, or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(8) the term "matching program"--

(A) means any computerized comparison of--

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of--

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include--

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 464 or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches-

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency;

if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel; or

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel;

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) Conditions of Disclosure.

No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be:

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research

or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(f) of title 31.

(c) Accounting of Certain Disclosures

Each agency, with respect to each system of records under its control, shall--

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of--

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made. (d) Access to Records. Each agency that maintains a system of records shall--

(d) Access to records

Each agency that maintains a system of records shall--

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and:

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either--

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) Agency Requirements.

Each agency that maintains a system of records shall--

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual--

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any party of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include--

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources or records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) Agency rules.

In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall:

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) Civil remedies.

Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of-

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) Rights of legal guardians.

For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) Criminal penalties.

Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than $ 5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $ 5,000.

(j) General exemptions.

The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is--

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) Specific exemptions.

The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is--

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: Provided, however, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United Sates or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical

records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(1)(1) Archival records.

Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section,

shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m) Government contractors.

(1) When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(f) of title 31 shall not be considered a contractor for the purposes of this section.

(n) Mailing lists.

An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) Matching agreements-- (1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying-

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to-

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel, that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall--

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if-

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) Verification and opportunity to contest findings. (1) In order to protect any individual whose records are used in matching programs, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual as a result of information produced by such matching programs, until an officer or employee of such agency has independently verified such information. Such independent verification may be satisfied by verification in accordance with (A) the requirements of paragraph (2); and (B) any additional requirements governing verification under such Federal benefit program.

(2) Independent verification referred to in paragraph (1) requires independent investigation and confirmation of any information used as a basis for an adverse action against an individual including, where applicable-

(A) the amount of the asset or income involved,

(B) whether such individual actually has or had access to such asset or income for such individual's own use, and

(C) the period or periods when the individual actually had such asset or income.

(3) No recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to any individual described in paragraph (1), or take other adverse action against such individual as a result of information produced by a matching program, (A) unless such individual has received notice from such agency containing a statement of its findings and informing the individual of the opportunity to contest such findings, and (B) until the subsequent expiration of any notice period provided by the program's law or regulations, or 30 days, whichever is later. Such opportunity to contest may be satisfied by notice, hearing, and appeal rights governing such Federal benefit program. The exercise of any such rights shall not affect any rights available under this section.

(4) Notwithstanding paragraph (3), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during the notice period required by such paragraph.

(q) Sanctions-- (1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless-

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

(r) Report on new systems and matching programs.

Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) Biennial report.

The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report-

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;

(2) describing the exercise of individual rights of access and amendment under this section during such year;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974

(t) Effect of other laws.

(1) No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) Data Integrity Boards-- (1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board--

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including-

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4)(A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

(5)(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that-

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) The Director of the Office of Management and Budget shall, annually during the first 3 years after the date of enactment of this subsection and biennially thereafter, consolidate in a report to the Congress the information contained in the reports from the various Data Integrity Boards under paragraph (3)(D). Such report shall include detailed information about costs and benefits of matching programs that are conducted during the period covered by such consolidated report, and shall identify each waiver granted by a Data Integrity Board of the requirement for completion and submission of a cost-benefit analysis and the reasons for granting the waiver.

(7) In the reports required by paragraphs (3)(D) and (6), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

(v) Office of Management and Budget responsibilities-- The Director of the Office of Management and Budget shall-

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies.

APPENDIX C

KEY FREEDOM OF INFORMATION ACT CASES

KEY FREEDOM OF INFORMATION ACT CASES

The following case citations represent an overview of the most important FOIA decisions covering various exemptions and procedural issues. For those doing research into the case law, these citations are meant as a good starting point to help you move quickly into the pertinent cases. It is by no means exhaustive, but is meant to highlight the more important decisions.

Exemption 1

1. EPA v. Mink, 410 U.S. 73 (1973)
2. Phillippi v. CIA, 546 F.2d 1009 (D.C. Cir. 1976)
3. Gardels v. CIA, 689 F.2d 1100 (D.C. Cir. 1982)
4. Allen v. CIA, 636 F.2d 1287 (D.C. Cir. 1980)
5. Ray v. Turner, 587 F.2d 1187 (D.C. Cir. 1978)
6. Abbotts v. NRC, 766 F.2d 604 (D.C. Cir. 1985)
7. Fitzgibbon v. CIA, 578 F. Supp. 704 (D.D.C. 1983)
8. King v. Dept. of Justice, 830 F.2d 210 (D.C. Cir. 1987)
9. In Re Dept. of Defense, 848 F.2d 232 (D.C. Cir. 1988)

Exemption 2

1. Dept. of the Air Force v. Rose, 425 U.S. 352 (1976)
2. Jordan v. Dept. of Justice, 591 F.2d 753 (D.C. Cir. 1978)
3. Crooker v. Bureau of Alcohol, Tobacco and Firearms, 670 F.2d 1051 (D.C. Cir. 1981)
4. Founding Church of Scientology v. Smith, 721 F.2d 828 (D.C. Cir. 1983)
5. National Treasury Employees Union v. U.S. Customs Service, 802 F.2d 525 (D.C. Cir. 1986)
6. Schwaner v. Dept. of the Air Force, 898 F.2d 793 (D.C. Cir. 1990)

Exemption 3

1. Administrator, FAA v. Robertson, 422 U.S. 255 (1975)
2. Consumer Product Safety Commission v. GTE Sylvania, 447 U.S. 102 (1980)
3. Greentree v. U.S. Customs Service, 674 F.2d 74 (D.C. Cir. 1982)
4. Long v. IRS, 596 F.2d 362 (9th Cir. 1979)
5. American Jewish Congress v. Kreps, 574 F.2d 624 (D.C. Cir. 1978)
6. Church of Scientology v. IRS, 792 F.2d 146 (D.C. Cir. 1986)
7. CIA v. Sims, 471 U.S. 159 (1985)
8. Sims v. CIA, 709 F.2d 95 (D.C. Cir. 1983)
9. Association of Retired Railroad Workers v. U.S. Railroad Retirement Board, 830 F.2d 331 (D.C. Cir. 1987)

Exemption 4

1. National Parks and Conservation Assoc. v. Morton, 498 F.2d 765 (D.C. Cir. 1974)
2. National Parks and Conservation Assoc. v. Kleppe, 547 F.2d 673 (D.C. Cir. 1976)
3. 9 to 5 Organization for Women Office Workers v. Board of Governors of the Federal Reserve System, 721 F.2d 1 (1st Cir. 1983)
4. Public Citizen Health Research Group v. FDA, 704 F.2d 1280 (D.C. Cir. 1983)
5. Critical Mass Energy Project v Nuclear Regulatory Commission, 830 F.2d 278 (D.C. Cir. 1987)

Reverse-FOIA

1. Chrysler v. Brown, 441 U.S. 281 (1979)
2. NOW v. Social Security Administration, 736 F.2d 727 (D.C. Cir. 1984)
3. AT&T Information Systems v. GSA, 810 F.2d 1233 (D.C. Cir. 1987)
4. CNA Financial Corp. v. Donovan, 830 F.2d 1132 (D.C. Cir. 1987)
5. Occidental Petroleum Corp. v. SEC, 873 F.2d 325 (D.C. Cir. 1989)

Exemption 5

1. EPA v. Mink, 410 U.S. 73 (1973)
2. NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975)
3. FTC v. Grolier, 462 U.S. 19 (1983)
4. United States v. Weber Aircraft Corp., 465 U.S. 792 (1984)
5. Federal Open Market Committee v. Merrill, 443 U.S. 340 (1979)
6. Mead Data Central v. Dept. of the Air Force, 566 F.2d 242 (D.C. Cir. 1977)
7. Paisley v. CIA, 721 F.2d 686 (D.C. Cir. 1983)
8. Senate of Puerto Rico v. Dept. of Justice, 823 F.2d 574 (D.C. Cir. 1987)
9. Ryan v. Dept. of Justice, 617 F.2d 781 (D.C. Cir. 1980)
10. County of Madison v. Dept. of Justice, 641 F.2d 1036 (1st Cir. 1981)
11. Wolfe v. Dept. of Health and Human Services, 839 F.2d 768 (D.C. Cir. 1988)
12. National Wildlife Federation v. U.S. Forest Service, 861 F.2d 1114 (9th Cir. 1989)
13. Formaldehyde Institute v. Dept. of Health and Human Services, 889 F.2d 1118 (D.C. Cir. 1989)
14. Dow Jones & Co. v. Dept. of Justice, No. 89-5353 (D.C. Cir., July 24, 1990)

Exemption 6

1. Dept. of the Air Force v. Rose, 425 U.S. 352 (1976)
2. Dept. of State v. Washington Post, 456 U.S. 595 (1982)
3. Dept. of Justice v. Reporters Committee, 489 U.S. __, 109 S.Ct. 1468 (1989)
4. Getman v. NLRB, 450 F.2d 670 (D.C. Cir. 1971)
5. Fund for Constitutional Government v. National Archives, 656 F.2d 856 (D.C. Cir. 1981)
6. Arieff v. Dept. of the Navy, 712 F.2d 1462 (D.C. Cir. 1983)
7. National Association of Retired Federal Employees v. Horner, 879 F.2d 873 (D.C. Cir. 1989)

Exemption 7

1. FBI v. Abramson, 456 U.S. 615 (1982)
2. Dept. of Justice v. Reporters Committee, 489 U.S. __, 109 S.Ct. 1468 (1989)
3. John Doe Agency v. John Doe Corp., 493 U.S. __, 110 S.Ct. 471 (1989)
4. Lesar v. Dept. of Justice, 636 F.2d 472 (D.C. Cir. 1980)
5. Pratt v. Webster, 673 F.2d 408 (D.C. Cir. 1982)
6. Shaw v. FBI, 749 F.2d 58 (D.C. Cir 1984)
7. Brant Construction Co. v. EPA, 778 F.2d 1258 (7th Cir. 1986)
8. Wilkinson v. FBI, 633 F. Supp. 336 (C.D. Cal. 1986)
9. King v. Dept. of Justice, 830 F.2d 210 (D.C. Cir. 1987)
10. Keys v. Dept. of Justice, 830 F.2d 337 (D.C. Cir. 1987)
11. Irons v. FBI, 851 F.2d 532 (1st Cir. 1988)
12. Schmerler v. FBI, 900 F.2d 333 (D.C. Cir. 1990)
13. Dow Jones & Co. v. Dept. of Justice, No. 89-5353 (D.C. Cir., July 24, 1990)

Exemption 8

1. Consumers Union v. Heimann, 589 F.2d 531 (D.C. Cir. 1978)
2. Gregory v. Federal Deposit Insurance Corp., 631 F.2d 896 (D.C. Cir. 1980)
3. Mermelstein v. SEC, 629 F. Supp. 672 (D.D.C. 1986)

Exemption 9

1. Pennzoil Co. v. Federal Power Commission, 534 F.2d 627 (5th Cir. 1976)
2. Superior Oil Co. v. Federal Energy Regulatory Commission, 563 F.2d 627 (5th Cir. 1977)
3. Black Hills Alliance v. U.S. Forest Service, 603 F. Supp. 117 (D.S.D. 1984)

Agency Records

1. Kissinger v. Reporters Committee, 445 U.S. 136 (1980)
2. Forsham v. Harris, 445 U.S. 169 (1980)
3. Dept. of Justice v. Tax Analysts, 492 U.S. __, 109 S.Ct. 2841 (1989)
4. Bureau of National Affairs v. Dept. of Justice, 742 F.2d 1484 (D.C. Cir. 1984)

Procedural Matters

1. Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973)
2. Open America v. Watergate Special Prosecution Force, 547 F.2d 605 (D.C. Cir. 1976)
3. Mayock v. INS, 714 F. Supp. 1558 (N.D. Cal. 1989)
4. Payne Enterprises, Inc. v. United States, 837 F.2d 486 (D.C. Cir. 1988)
5. Founding Church of Scientology v. National Security Agency, 434 F. Supp. 632 (D.D.C. 1977), rev'd 610 F.2d 824 (D.C. Cir. 1979)
6 Weisberg v. Dept. of Justice, 543 F.2d 308 (D.C. Cir. 1976), decision on remand, 438 F. Supp. 492 (D.D.C. 1977), rev'd, 627 F.2d 365 (D.C. Cir. 1980)
7. McGehee v. CIA, 697 F.2d 1095 (D.C. Cir. 1983)
8. Ely v. FBI, 781 F.2d 1487 (11th Cir. 1986)

Fee Waivers

1. Lybarger v. Cardwell, 577 F.2d 764 (1st Cir. 1978)
2. Better Government Association v. Dept. of State, 780 F.2d 86 (D.C. Cir. 1986)
3. National Treasury Employees Union v. Griffin, 811 F.2d 644 (D.C. Cir. 1987)
4. McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282 (9th Cir. 1987)
5. National Security Archive v. Dept. of Defense, 881 F.2d 1381 (D.C. Cir. 1989)
6. Eudey v. CIA, 478 F. supp. 1175 (D.D.C. 1979)

Attorneys' Fees

1. Vermont Low Income Advocacy Council v. Usery, 546 F.2d 509 (2nd Cir. 1976)
2. Cuneo v. Rumsfeld, 553 F.2d 1360 (D.C. Cir. 1977)
3. National Building Maintenance Inc. v. Sampson, 559 F.2d 704 (D.C. Cir. 1977)
4. LaSalle Extension University v. FTC, 627 F.2d 481 (D.C. Cir. 1980)
5. Kuzma v. U.S. Postal Service, 725 F.2d 16 (2d Cir. 1984)
6. Rosenfeld v. U.S., 859 F.2d 717 (9th Cir. 1988)

APPENDIX D

SUMMONS AND COMPLAINT WITH DECLARATION

The enclosed material includes a copy of an actual complaint filed against DCAA in the D.C. Circuit Court by Hamel and Park, attorneys for Todd Shipyards Corporation (Civil Action 86-1157). It is followed by an employee declaration which is typical of the requirement placed on Agency personnel responsible for processing cases that are eventually litigated in the Courts.

SUMMONS IN A CIVIL ACTION

United States District Court

FOR THE

District of Columbia

CIVIL ACTION FILE NO. 86-1157

HOGAN, J.

TODD SHIPYARDS CORPORATION

Plaintiff

v.

Defense Contract Audit Agency
and
Naval Sea Systems Command

Defendant

SUMMONS

To the above named Defendant : Defense Contract Audit Agency

You are hereby summoned and required to serve upon John G. DeGooyer, Esq.

plaintiff's attorney , whose address HAMEL & PARK
888 Sixteenth Street, N.W.
Washington, D.C. 20006

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JAMES F. DAVEY
Clerk of Court.

Benjamin Leung
Deputy Clerk.

Date: APR 25 1986

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

United States District Court
For the District of Columbia
Office of the Clerk
3rd and Constitution Avenue, N.W.
Washington, D. C. 20001

James F. Davey
Clerk

NOTICE OF RIGHT TO CONSENT TO TRIAL BEFORE A UNITED STATES MAGISTRATE

In accordance with the provisions of Title 28, U.S.C. §636(c), you are hereby notified that the United States Magistrates of this District Court, in addition to their other duties, upon the consent of all parties in a civil case, may conduct any or all proceedings in a civil case, including a jury or nonjury trial, and order the entry of a final judgment.

You should be aware that your decision to consent, or not to consent, to the referral of your case to a United States Magistrate must be entirely voluntary. Only if all the parties to the case consent to the reference to a Magistrate will either the Judge or the Magistrate to whom the case has been assigned be informed of your decision.

An appeal from a judgment entered by a Magistrate may be taken directly to the United States Court of Appeals for this judicial circuit in the same manner as an appeal from any other judgment of a District Court. Alternatively, upon consent of all parties, an appeal from a judgment entered by a Magistrate may be taken directly to a District Judge. Cases in which an appeal is taken to a District Judge may be reviewed by the United States Court of Appeals for this judicial circuit only by way of petition for leave to appeal.

James F. Davey
JAMES F. DAVEY
Clerk of the Court

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TODD SHIPYARDS CORPORATION
One State Street Plaza
New York, New York 10004,

Plaintiff,

HOGAN, J.

v.

DEFENSE CONTRACT AUDIT AGENCY
Cameron Station
Alexandria, Virginia 22304-6178

and

NAVAL SEA SYSTEMS COMMAND
Department of the Navy
Washington, D.C. 20362-5101,

Defendants.

Civil Action No. 86-1157

APR 25 1986

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, as amended, ("FOIA"), to order defendants to produce to plaintiff certain records within their possession and control.

Jurisdiction

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §1331. Venue lies in this Court pursuant to 5 U.S.C. §(a)(4)(B) and 28 U.S.C. §1391(e).

Parties

3. Plaintiff, Todd Shipyards Corporation, is the requestor of the agency records that have been improperly withheld.

4. Defendant, Defense Contract Audit Agency ("DCAA"), is an agency of the United States responsible for complying with the provisions of FOIA and has possession of the records plaintiff seeks.

5. Defendant, Naval Sea Systems Command ("NAVSEA"), Department of the Navy, is an agency of the United States responsible for complying with the provisions of FOIA and has possession of one of the records plaintiffs seeks.

Facts Giving Rise To This Action

6. By letter dated and hand-delivered to defendant DCAA on March 3, 1986, plaintiff, by counsel, requested access to the following records:

> DCAA Audit Report dated on or about January 30, 1986 relating to workers' compensation insurance premium costs of Todd Shipyards Corportion and/or Todd Pacific Shipyards Corporation and any and all documents relating thereto.

A copy of this request is attached hereto as Exhibit A.

7. By letter dated March 21, 1986, DCAA advised plaintiff's counsel that the audit report and two other documents responsive to its FOIA request had been located. The March 21 DCAA letter included two enclosures:

a. The first enclosure, dated March 21, 1986 and addressed to NAVSEA Contracting Officer, requested the Contracting Officer to make a determination as to the release of the audit report to which plaintiff seeks access. A copy of that audit report, identified as Audit Report No. 6171-6T159204-6-229-S1, was enclosed for the Contracting Officer's review. To date, the Contracting Officer has failed to make any such determination.

b. The second enclosure, dated March 21, 1986 and addressed to the DCAA Regional Director, Philadelphia, requested the Director to make a determination as to the release of two documents identified as responsive to plaintiff's FOIA request. A copy of those documents, in addition to the subject audit report, were enclosed for the Director's review. To date, the DCAA Regional Director has failed to make any such determination.

A copy of DCAA's letter, with enclosures, is attached hereto as Exhibit B.

8. By letter dated April 18, 1986, received by plaintiff's counsel on April 23, NAVSEA acknowledged receipt of plaintiff's March 3, 1986 FOIA request. No determination, however, was made by NAVSEA as to the release of the documents sought by plaintiff, and no indication was given as to when such a determination would be made. A copy of NAVSEA's letter is attached hereto as Exhibit C.

9. As of this date, defendants have provided plaintiff neither access to the materials sought in its FOIA request nor a disclosure determination with respect thereto within the time period specified by 5 U.S.C. 552 §(a)(6).

10. Plaintiff has exhausted all administrative remedies.

11. Plaintiff has a right of access to the requested information under 5 U.S.C. § 552(a)(3) and there is no legal basis for defendants' denial of such access.

WHEREFORE, plaintiff requests that this Court:

(1) Order defendants to make the information available as requested;

(2) Expedite the proceedings in this action as provided in 5 U.S.C. § 552(a)(4)(B);

(3) Award plaintiff its costs and reasonable attorney fees in this action, pursuant to 5 U.S.C. § 552(a)(4)(E);

(4) Issue a written finding, pursuant to 5 U.S.C. § 552(a)(4)(F), that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding; and

(5) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

John G. DeGooyer

John G. DeGooyer #017970
Maureen Duignan #290056

HAMEL & PARK
888 Sixteenth Street, N.W.
Washington, D.C. 20006
(202)835-8000

Attorneys for Plaintiff
Todd Shipyards Corporation

Dated: April 25, 1986

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TODD SHIPYARDS CORPORATION)
)
Plaintiff,)
)
v.) Civil Action No. 86-1157
)
DEFENSE CONTRACT AUDIT AGENCY,)
& NAVAL SEA SYSTEMS COMMAND)
)
)
Defendant.)
)
)

DECLARATION OF SHARON E. HEITMAN

I, Sharon E. Heitman, Freedom of Information Act Coordinator, Defense Contract Audit Agency (DCAA), hereby declare as follows:

1. On 3 March 1986, the letter bearing the same date, Re: Freedom on Information Act Request from Mr. John G. De Gooyer of Hamel and Park was hand delivered to the Defense Contract Audit Agency, office of the Records Administrator, Cameron Station, Alexandria, Virginia 22304-6178. On that day I contacted Mr. De Gooyer by telephone and I asked him to be more specific as to which audit report he was requesting. He told me that it was his understanding that the audit report was located at DCAA Headquarters. Subsequently, I contacted Mr. Roger William Cowles, the Chief of Special audit Division, Office of the Assistant Director, Operations, DCAA and he provided me a copy of a report which is apparently the audit report requested by Hamel and Park. The report was prepared by the New York Branch Office, Philadelphia Region, DCAA.

2. In response to the request by Hamel and Park I prepared a letter which was signed by Mrs. Connie L. Miller, Records Administrator, DCAA and dispatched on 21 March 1986. This letter is the letter enclosed

as Exhibit B of the plaintiff complaint in Civil Action No. 86-1157. Correspondence was also sent to the contract officer at Naval Sea Systems Command for a determination regarding the release of the audit report as required by regional (32 CFR 290.26(b)(2)). Also correspondence was sent to the Regional Director, Philadelphia Region, DCAA which referred the request to him as the official designated as the DCAA release/denial authority (32 CFR 290.25(e)) (attached hereto as Enclosure A). The Regional Director, Philadelphia was informed that the contracting officer would make the release determination on the audit report and that the determination on the working paper files should take into consideration the contracting officer's determination.

3. During the consideration of this Freedom of Information Act request two documents were identified and referred to as apparently responsive to the request. Advice subsequently provided by the Office of the General Counsel, DCAA, resulted in the conclusion that these two documents were not reasonably described by the request. These two documents are a transmittal memorandum and a completed DCAA Form 2000.0. These documents were prepared consistent with guidance in the Memorandum for All DCAA Employees, Subject: Reporting Suspected Fraud and Other Unlawful Activity, dated 29 August 1986 (attached hereto as Enclosure B).

4. Were the completed DCAA Form 2000.0 and the memorandum reasonably described in a Freedom of Information Act request, the DCAA General Counsel's office has advised that Exemption 7 would be applicable to limit mandatory disclosure.

I declare under penalty of perjury that the foregoing is, to the best of my knowledge, true and correct.

Executed on ________________, 1986

____

Sharon E. Heitman
Freedom of Information Act
Coordinator
Defense Contract Audit Agency

APPENDIX E

TRAINING OPPORTUNITIES

TRAINING OPPORTUNITIES

DEPARTMENT OF JUSTICE

Freedom of Information for Attorneys and Access Professionals, Office of Legal Education, (202) 633-4104

Introduction to the Freedom of Information Act for Non-Specialists, Office of Information and Privacy, (202) 786-4796

Advanced Seminar on the Freedom of Information Act, Office of Information and Privacy, (202) 786-4796

Annual Update Seminar on the Freedom of Information Act, Office of Information and Privacy, (202) 786-4796

OFFICE OF PERSONNEL MANAGEMENT

Freedom of Information and Privacy Acts; also titled Freedom of Information and Personal Privacy and; Freedom of Information and Privacy Act Workshops

The aformentioned courses are offered by OPM's Regional Training Centers. General contact may be made with their local offices for further information. Atlanta (404) 841-5193, Chicago (312) 353-2919, Dallas (214) 767-8241, and Philadelphia (215) 597-4442.

Sucessful Implementation of the Freedom of Information Act and Privacy Act, Center for Communications and Administrative Management, Administrative Management Training Institute, (202) 632-6047

Freedom of Information Act and Privacy Act Workshop for Administrative and Secretarial Personnel, Center for Communications and Administrative Management, Administrative Management Training Institute, (202) 632-6047

Annual Symposium on the Freedom of Information and Privacy Acts, Government Executive Institute, (202) 632-5662

USDA GRADUATE SCHOOL

Implementation of the Freedom of Information and Privacy Acts, (202) 447-3247

The Freedom of Information Act and the Privacy Act, (corespondence course), (202) 447-7123

Information Access Laws, (202) 447-3247

AMERICAN SOCIETY OF ACCESS PROFESSIONALS

Annual Symposium/Training Conference on Privacy and Access Issues, (301) 913-0030

(Note: The above organization, known as ASAP, is a private membership society of Federal and non-Federal employees who have a primary interest in the workings of the Government's four access laws. Further information may be obtained from the American Society of Access Professionals, 7910 Woodmont Avenue, Suite 1208, Bethesda, MD 20814-3015).

APPENDIX F

REFERENCE MATERIAL

REFERENCE MATERIAL

GOVERNMENT PUBLICATIONS

Regulatory Issuances

Title 5, United States Code, 552, The Freedom of Information Act
Title 5, United States Code, 552a, The Privacy Act of 1974

Department of Defense

DoD Directive 5105.36, Defense Contract Audit Agency
DoD Directive 5400.7, DoD Freedom of Information Act Program
DoD Directive 5400.11, Department of Defense Privacy Program
DoD 5400.7-R, DoD Freedom of Information Act Program
DoD 5400.11-R, Department of Defense Privacy Program
DoD FAR Supplement, Appendix N Activity Address Numbers
DoD Handbook 4105.59-H, DoD Directory of Contract Administration Services Components

DCAA Regulation 5410.8, DCAA Freedom of Information Act Program
DCAA Regulation 5410.10, DCAA Privacy Act Program
DCAA Instruction 5025.2, Index of DCAA Numbered Publications
DCAA Instruction 5025.13, Index of DCAA Memorandums for Regional Directors
DCAA Instruction 7230.3, User Charges
DCAA Pamphlet 5100.1, Directory of DCAA Offices
DCAA Pamphlet 5410.12, FOIA - A Manager's Guide to A Complex Law
DCAA Pamphlet 5410.13, DCAA Compilation of Privacy Act System Notices

Other Federal Agencies

OMB Circular A-130, Management of Federal Information Resources (50 FR 52730)
OMB FOIA Reform Act of 1986; Uniform FOIA Fee Schedule and Guidelines (52 FR 10012)
OMB Privacy Act Implementation (40 FR 28948)

Procedural and Technical Guidance

Freedom of Information Act and Amendments of 1974, Committee on the Judiciary, U.S. Senate
A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records, Committee on Government Operations, U.S. House of Representatives
Who Cares about Privacy? Oversight of the Privacy Act of 1974 by the Office of Management and by the Congress, Committee on Government Operations, U.S. House of Representatives

Attorney General's Memorandum on the 1986 amendments to the Freedom of Information Act, Department of Justice
Freedom of Information Act Case List, Department of Justice
FOIA Update, Department of Justice
Overview of the Privacy Act of 1974, Department of Justice

The Privacy Act of 1974, (Videotape), Defense Privacy Office
The Privacy Act of 1974, (Videotape w/captions), Defense Privacy Office
Training Manual, Privacy Act of 1974, Defense Privacy Office
OASD Memorandum, 15 Oct 86, subject: Defense Privacy Board Advisory Opinions, Transmittal Memorandum 86-2
OASD Memorandum, 08 Nov 88, subject: P.L. 100-503, The Computer Matching and Privacy Protection Act of 1988

DoD Freedom of Information Act Program Calendar Year Report to Congress, Department of Defense
Freedom of Information Act, (Unnumbered Pamphlet), Department of Defense
OASD Memorandum, 8 Jul 87, subject: Predisclosure Notification Procedures for Confidential Commercial Information

Electronic Recordkeeping, General Services Administration

Privacy Act Issuances, Volumes I-V, Compilation of Privacy Act System Notices, Federal Register

Federal Administrative Procedure Sourcebook, Administrative Conference of the United States

GAO Report, FOIA, Agency Reading Rooms
GAO Report, FOIA, Accuracy of the State Department's Automated Case Tracking System
GAO Report, FOIA, Concerns Regarding the Nuclear Regulatory Commission's Implementation of the FOIA
GAO Report, FOIA, Cost of Collecting and Processing Fees
GAO Report, FOIA, Department of Justice's Response to Requests for Court Decisions
GAO Report, FOIA, Federal Agencies' Implementation Can be Improved
GAO Report, FOIA, Fee Waiver Practices at the FBI
GAO Report, FOIA, Noncompliance with Affirmative Disclosure
GAO Report, FOIA, Partial Videotape Erasure of 1982 Air Force Thunderbirds Crash
GAO Report, FOIA, Release of Service Members' Addresses to a Political Campaign Committee
GAO Report, FOIA, State Department Request Processing
GAO Report, Computers and Privacy, How the Government Obtains, Verifies, Uses, and Protects Personal Data

NONGOVERNMENT PUBLICATIONS

Electronic Public Information and the Public's Right to Know, Prepared by the Benton Foundation
Handbook on How to Use the FOIA (Holding the Government Accountable for its Actions)
Federal Information in the Electronic Age: Policy Issues for the 1990s, The Bureau of National Affairs
The Legal Assistant's Handbook, The Bureau of National Affairs
Litigation Under the Federal Freedom of Information & Privacy Act, 1990 Edition, Prepared by the American Civil Liberties Union
Report from the FOIA Front, A Study of Journalists' Usage of the FOIA, Prepared by The Society of Professional Journalists
Using the Freedom of Information Act - A Step by Step Guide, Prepared by The American Civil Liberties Union

PERIODICALS

Access Reports, Freedom of Information Act, biweekly newsletter available from Access Reports, Inc., 1301 Pennsylvania Avenue, N.W., Suite 1000, Washington, DC 20004, (202) 347-7757

Privacy Times, biweekly newsletter available from Privacy Times, P.O. Box 21501, Washington, DC 20009, (202) 526-2415

Privacy Journal, monthly newsletter available from Privacy Journal, P.O. Box 28577, Providence, RI 02908

APPENDIX G

AGENCY FORMS FOR PROCESSING FOIA REQUESTS

Freedom of Information
Cost Estimate Worksheet

__ - ___ - ____ - __

I. **Search Time**

a. Manual Search

Type	Grade	Hourly Rate(s) X	Total Hours	= Cost
Clerical	GS8 and below	$12.00		
Professional	GS9-GS15	$25.00		
Executive	GS16/ES1 and above	$45.00		

b. Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The salary scale (equating to paragraph a. above) for the computer operator/programmer determining how to conduct and subsequently executing the search will be recorded as part of the computer search.

Subtotal $ ________

II. **Duplication**

Type	Cost per Page(s) X	Number	= Cost
Pre-Printed material	$.02		
Office copy	$.15		
Microfiche	$.25		
Computer copies (tapes or printouts)	Actual cost of duplicating the tape or printout (includes operator's time and cost of the tape.)		

Subtotal $ ________

III. **Review Time** (in the case of commercial requesters)

a. Cognizant HPSE

Type	Grade	Hourly Rate(s) X	Total Hours	= Cost
Clerical	GS8 and below	$12.00		
Professional	GS9-GS15	$25.00		
Executive	GS16/ES1 and above	$45.00		

b. Office of Counsel

Type	Grade	Hourly Rate(s) X	Total Hours	= Cost
Clerical	GS8 and below	$12.00		
Professional	GS9-GS15	$25.00		
Executive	GS16/ES1 and above	$45.00		

c. Other Staff Elements

Type	Grade	Hourly Rate(s) X	Total Hours	= Cost
Clerical	GS8 and below	$12.00		
Professional	GS9-GS15	$25.00		
Executive	GS16/ES1 and above	$45.00		

Subtotal $ ________

Total I-III $ ________

DCAA Form 5410-3
January 1991

FREEDOM OF INFORMATION CASE SUMMARY

1. REQUEST NUMBER

2. TYPE OF REQUEST
☐ INITIAL
☐ APPEAL

3. TYPE OF REQUESTER
☐ COMMERCIAL ☐ NEWS MEDIA ☐ OTHER
☐ SCIENTIFIC/EDUCATIONAL INSTITUTION

4. ACTIONS TAKEN
☐ GRANTED IN FULL ☐ GRANTED IN PART ☐ DENIED ☐ LACK OF RECORDS ☐ NOT AN AGENCY RECORD
☐ RECORDS NOT DESCRIBED ☐ REQUESTER NONCOMPLIANCE ☐ REQUEST WITHDRAWN ☐ TRANSFERRED TO: ______

5. EXEMPTIONS INVOKED
☐ B1 ☐ B2 ☐ B3 AND STATUTE ______ ☐ B4 ☐ B5 ☐ B6 ☐ B7 ☐ B8 ☐ B9 IDA ______

6. EXTENSIONS
☐ LOCATION ☐ VOLUME ☐ CONSULTATION ☐ COURT INVOLVEMENT

7. PROCESSING COST

Grade levels for each type of direct cost listed below will be as follows: Clerical (GS-8 and below), Professional (GS-9 — GS-15) and Executive (GS-16 and above).

TYPE OF PROCESS (A)	TYPE OF DIRECT COST (B)	HOURLY RATE (C)	NUMBER OF HOURS (D)	COST (C X D) (E)	TOTAL COST (ADD FIGURES IN COLUMN E FOR EACH PROCESS) (F)
Search	Clerical	$12.00			*
	Professional	$25.00			
Review/Excising	Clerical	$12.00			**
	Professional	$25.00			
	Executive	$45.00			
Coordination/ Approval/ Denial	Professional	$25.00			
	Executive	$45.00			
Correspondence Preparation	Clerical	$12.00			
Computer Search	Machine				*
Other Activity	Clerical	$12.00			
	Professional	$25.00			

8. OTHER CASE COSTS

TYPE OF COST (A)	COST PER COPY (B)	TOTAL PAGES (C)	TOTAL COST (B X C) (D)
Office Copy Reproduction	.15		*
Microfiche Reproduction	.25		*
Printed Records	.02		*

9. REMARKS

10. FOR FOI OFFICE USE ONLY

TOTAL COLLECTABLE COSTS	TOTAL PROCESSING COSTS	TOTAL CHARGED	FEES WAIVED/REDUCED ☐ TWO FREE HOURS OF SEARCH TIME ☐ 100 FREE PAGES OF REPRODUCTION ☐ PUBLIC/GOVERNMENT INTEREST ☐ LESS THAN $15.00 THRESHOLD ☐ OTHER: ______
SEARCH FEES PAID	REVIEW FEES PAID	COPY FEES PAID	

DCAA Form 5410-4
August 1989

*Chargeable to the requester
**Chargeable to commercial requesters

INSTRUCTIONS FOR COMPLETING THE FOIA CASE SUMMARY

1. REQUEST NUMBER - First two digits will express Calendar Year followed by dash (-) and activity request number. i.e., I-89-001-H.

2. TYPE OF REQUEST - Mark the appropriate block to indicate initial request or appeal of a denial.

3. TYPE OF REQUESTER - Mark the appropriate block to indicate category of requester.

4. ACTIONS TAKEN - Mark the block(s) which summarizes actions taken on the request. If the action was transferred, enter the name(s) of the other DoD Component or Federal Agency to which it was sent. Referrals to other DCAA activities should not be counted for reporting purposes. See DCAAR 5410.5 for more information on each action taken.

5. EXEMPTIONS INVOKED - Mark the appropriate exemption(s) invoked to withold records from the public. In the case of exemption (b)(3), the actual statute should also be entered (e.g., 5 USC 1917).

IDA - Initial Denial Authority - Enter the name of the IDA.

6. EXTENSIONS - Mark the appropriate block to indicate the reason for invoking a 10 day extension.

7. PROCESSING COST - For each applicable activity category, enter time expended to the nearest 15 minutes in the number of hours column (D).

SEARCH - Time spent locating from the files the requested information.

REVIEW/EXCISING - Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified.

In reviewing for other than classification, FOI exemptions 2 through 9 should be considered.

COORDINATION/APPROVAL/DENIAL - Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

CORRESPONDENCE PREPARATION - Time spent in preparing the necessary correspondence and forms to answer the request.

COMPUTER SEARCH - Enter exact computer processing value in the total hours column. The salary scale for the programmer/operator executing the search will be recorded as part of the computer search cost.

Multiply total hours by the computer hourly rate and enter the cost figures. Computer search will be based on direct cost only of the Central Processing Unit, input/output devices, and memory capacity of the actual computer and configuration used.

OTHER ACTIVITY - Time spent in activity other than above, such as, duplicating documents, hand carrying documents to other locations, restoring files, etc.

8. OTHER CASE COSTS

OFFICE COPY REPRODUCTION - Enter the number of pages reproduced.

- Multiply by the rate per copy and enter cost figures.

MICROFICHE REPRODUCTION - Enter the number of microfiche copies reproduced.

- Multiply by the rate per copy and enter cost figures.

PRINTED RECORDS - Enter total pages in each category. The categories are:

Forms (Include any type of printed forms)

Publications (Include any type of bound document, such as directives, regulations, studies, etc.)

Reports (Include any type of memorandum, staff action paper, etc.)

- Multiply the total number of pages in each category by the rate per page and enter cost figures.

9. REMARKS - Self explanatory.

10. FOR FOI OFFICE ONLY

TOTAL COLLECTABLE COSTS - Add the blocks in the total cost column marked with an asterisk and enter total in the total collectable cost block.

TOTAL PROCESSING COSTS - Add all blocks in the total cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

TOTAL CHARGED - Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

SEARCH FEES PAID - Enter total clerical and professional search and/or computer search fees paid by the requester.

REVIEW FEES PAID - Enter total review fees paid by the requester.

COPY FEES PAID - Enter total amount paid by the requester for Office Copy reproduction/Microfiche reproduction and Printed records (e.g., Forms, Publications and/or Reports).

FEES WAIVED/REDUCED - Mark the appropriate block as applicable. Enter reason for the fee waiver/reduction (e.g., Public interest).

*U.S. GPO: 1989-261-085/02975

FREEDOM OF INFORMATION ACT ANNUAL REPORT WORKSHEET

PAGE ___ OF ___ PAGE(S)

	ACTIONS TAKEN									EXEMPTIONS INVOKED							STATUTES	EXTENSIONS				DIRECT COSTS					OTHER CASE COSTS					FEES COLLECTED		
Control Number	GRANTED IN FULL	GRANTED IN PART	DENIED	TRANSFERRED	LACK OF RECORDS	RECORDS NOT DESCRIBED	REQUESTOR NONCOMPLIANCE	REQUEST WITHDRAWN	NOT AN AGENCY RECORD	b1	b2	b3	b4	b5	b6	b7		LOCATION	VOLUME	CONSULTATION	COURT INVOLVEMENT	SEARCH TIME	REVIEW/EXCISING	COORDINATION/APPROVAL/DENIAL	CORRESPONDENCE PREPARATION	OTHER	COMPUTER	COPY	MICROFICHE	PRINTED RECORDS	OPERATION COSTS	SEARCH	COPY	REVIEW
SUBTOTAL																																		
TOTAL																																		

DCAA Form 5410-6
August 1989

REDUCED EXAMPLE - ORIGINAL IS 11" X 17"

FOIA

FREEDOM OF INFORMATION ACT

DEFENSE CONTRACT AUDIT AGENCY

ACTION

NOTE: RESPONSE TO REQUESTER MUST BE ACCOMPLISHED
WITHIN 10 WORKING DAYS AFTER RECEIPT.
(PUBLIC LAW 93-502)

DCAAR 5410.8

32 CFR PART 290

APPENDIX H

BOILERPLATE LETTERS AND MEMORANDUMS

DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178

IN REPLY REFER TO

CMR 502.5
A-90-100-C

Mr. Zane Edwards
Dutton Thomas Associates, Inc.
1895 N. Central Expressway
Suite 342, L.B. #171
Saint Rue, VT 75231

Dear Mr. Edwards:

This is to acknowledge receipt of your May 16, 1990 letter in which you are appealing the denial of your April 25, 1990 Freedom of Information Act request. We have requested the administrative file related to your case in order to facilitate review of the records in question. Once these records are made available, we will conduct an evaluation based on their content and offer you our final decision on the matter.

Should you have any questions related to the processing of your appeal, please contact Mr. Dave Henshall at (703) 274-4400.

Sincerely,

Sophie Emami, Chief
Information Resources
Management Branch

ACKNOWLEDGEMENT OF APPEAL

DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178

IN REPLY REFER TO

CMR 520.5
I-88-262-E

MEMORANDUM FOR REGIONAL DIRECTOR, EASTERN

ATTN: REGIONAL FOIA COORDINATOR

SUBJECT: Authentication of Documents

Mr. Bill Rothchild of Hertz, Jenson, Roberts, and Wingate received the following audit reports, under the FOIA, and needs to have them authenticated for admission as evidence in private litigation. The reports relate to Jones Systems, Inc., and were processed by your office under control number I-88-262-E. They are identified as:

5C175105 dated 12 Mar 85
6C175159 dated 24 Sep 86
7C175089-7-364 dated 13 Apr 87
7C175093-7-404 dated 13 Apr 87

Please reproduce the above records and complete the SD Form 426 provided at Enclosure 1. The sample, provided at Enclosure 2, should be followed when completing the form. Particular attention should be paid to those areas highlighted, as they should be filled out in their entirety. The completed package should be forwarded to this office no later than 25 May 1989.

Since the trial is scheduled to begin on 2 June 1989, expeditious processing is requested. Use of overnight/express mail is authorized. Should you have any questions, please contact Dave Henshall, CMR, at (703) 274-4400.

Sophie Emami
Chief, Information Resources
Management Branch

Encls 2
1. SD Form 426
2. Sample, SD Form 426

AUTHENTICATION OF DOCUMENTS

Interoffice Memorandum

CMR 502.5
I-90-104-H

TO: O and P

FROM: CMR

SUBJECT: Freedom of Information Act Request

The enclosed Freedom of Information Act request from Ms. Gail L. Linden of J.P. Anderson Company is forwarded for your action (Encl 1). The request has been categorized as a commercial use request and may be assessed charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought.

Please provide an estimate of assessable charges for the request on the attached DCAA Form 5410-3 (Enclosure 2), for applicable search, duplication, and review costs.

a. If the assessable charges exceed $15.00, please provide your cost estimate and return it to this office no later than 11 May 1990.

b. If assessable charges do not exceed $15.00, please review the documents for release under DCAA Regulation 5410.8, and provide this office your determination with releasable documents. Any recommendations for withholding information should be conveyed as bracketed text, in red pencil, on the copies you provide. You should forward your response to this office with a completed DCAA Form 5410-4 (Enclosure 3) no later than 18 May 1990.

Should you have any questions, please contact Dave Henshall, CMR, at 274-4400.

Sophie Emami, Chief
Information Resources
Management Branch

Enclosures
1. FOIA Request
2. DCAA Form 5410-3
3. DCAA Form 5410-4

COMMERCIAL USE TASKING MEMORANDUM FOR COST ESTIMATE OR FULL PROCESSING

DCAA Form 5020-1(R)
December 1985

DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178

IN REPLY REFER TO

CMR 502.5
I-90-070-H

Mr. James A. Garbinski
Commercial Applications, Inc.
45 William Street
Boston, MA 02181-4078

Dear Mr. Garbinski:

This is in response to your March 7, 1990 letter in which you requested one Memorandum for Regional Directors under the Freedom of Information Act.

Enclosed is a portion of the memorandum you requested:

> 90-OAD-016, 26 Jan 1990, subject: Deltek Accounting System Software Package.

Enclosure 2, Deltek Users List by State, dated 12 April 1989, is being withheld in it's entirety under the authority of Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4). This portion contains proprietary contractor data the release of which would cause substantial harm to the competitive position of Deltek Corporation.

Should you disagree with the determination cited above, you may appeal in writing within 60 calendar days from the date of this letter to Mr. John van Santen, Assistant Director, Resources, at the above address.

If you have any questions, please contact Dave Henshall at (703) 274-4400.

Sincerely,

Sophie Emami, Chief
Information Resources
Management Branch

Enclosures
a/s

DENIAL LETTER WITH APPEAL RIGHTS

DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178

IN REPLY REFER TO

CMR 502.4
I-90-207-H

Mr. Robert C. Edwards
Institute for Policy Studies
1503 K Street, N.W.
Washington, DC 20004-2505

Dear Mr. Edwards:

This is in response to your August 12, 1990 letter in which you appealed the denial of a fee waiver for your July 2, 1990 Freedom of Information Act request to our Central Region. In considering your request, two basic requirements, as set forth in 5 U.S.C. 552(a)(4)(A)(iii), must be satisfied before properly assessable fees can be waived or reduced. First, it must be established that "disclosure of the [requested] information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." Second, it must be established that the "disclosure of the information. . . is not primarily in the commercial interest of the requester." Where these two statutory requirements are satisfied, based upon information supplied by you as the requester, the waiver may be granted. Where one or both of these requirements is not satisfied, a fee waiver is not warrented under the statute.

The six enumerated factors stated below are those which the statutory standard, by its plain language, requires me to take into consideration in determining whether the two basic requirements for a fee waiver are met. These are applied sequentially during the fee waiver analysis.

The subject of the request.
The informative value of the information to be disclosed.
The contribution to an understanding of the subject by the public likely to result from disclosure.
The significance of the contribution to public understanding.
The existence and magnitude of a commercial interest.
The primary interest in disclosure.

All of these factors, undertaken in logical sequence, afford you as the requester, full and careful consideration of the merits of your request.

Initially, I evaluated whether the subject of the requested records, in the context of the request, concerns the operations or activities of the Agency. Clearly, since the records in question are contract audit files from our Central Region, the subject meets the threshold of specifically concerning identifiable operations or activities of the Agency.

FEE WAIVER DENIAL WITH JUDICIAL REVIEW ADVISORY

Secondly, I evaluated whether the disclosure would likely contribute to an understanding of Agency operations or activities. This required an analysis of the substantive content of the discloseable portions of the records you requested, in order to determine whether their disclosure would in fact be informative regarding the particular DCAA activities that are connected to the subject matter of your request. As these documents relate to Agency audits and your underlying interest appears to be propriety in contracting, I am drawn to conclude that disclosure would provide potentially meaningful information on our operations.

The third factor required me to consider whether disclosure would contribute to the understanding of the public at large, as opposed to your individual understanding or a narrow segment of interested persons. For the purposes of this analysis, your identity and qualifications, must be considered to determine whether you are in a position to contribute to public understanding through the disclosure. Specifically, your qualifications, nature of research, the purpose for which you intend to use this information, and your intended means of dissemination to the public must be readily apparent. Unfortunately, you are too vague, or silent, concerning these issues and consequently provided insufficient evidence that a contribution to understanding by the general public will result from a disclosure.

The final factor addressing public interest considerations is whether the contribution to public understanding of Agency operations or activities is significant. I must fully assess the likely impact of the disclosure on the public's understanding of the subject existing prior to the disclosure. Again, the level of contribution cannot be measured due to your silence on the potential significance to public understanding.

The plain language of these first requirements encompassed four related considerations. The latter two factors did not meet the established threshold for the pubic interest requirement and as such are inadequate as a basis for a public interest waiver.

Once the first requirement for a fee waiver has been met, the statutory standard then requires a determination of whether disclosure of the requested information is primarily in your commercial interest. Since there has been no demonstration of public interest, the second basic requirement need not be addressed.

CMR 502.4
I-90-207-H

As a result of my analysis, I have concluded that you have not sufficiently demonstrated that disclosure is in the public interest nor established that disclosure is not primarily in your commercial interest. Therefore, I have decided to deny your request for a fee waiver. This denial is the final decision of this Agency on your appeal. If you disagree with this decision, you may seek judicial review in the United States District Courts, in the district where you are located, where the requested information is located, or in the U.S. District Court of the District of Columbia.

Sincerely,

Sophie Emami, Chief
Information Resources
Management Branch

FEE WAIVER DENIAL WITH JUDICIAL REVIEW ADVISORY

DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178

IN REPLY REFER TO

CMR 502.5
I-88-346-H

Ms. Betty Walton
Rock Island Lumber Company
2230 East Imperial Highway
Warrenton, CA 90245

REGISTERED
RETURN RECEIPT REQUESTED

Dear Ms. Walton:

This is in reference to a December 2, 1988 Freedom of Information Act request from Ms. Eleanor Bryant of Benson, Carter, Fenton, and Madison for copies of Agency records related to Material Requirements Planning (MRP) Systems and Material Management and Accounting Systems (MMAS).

This further refers to your August 3, 1989 letter in which you offered your objections to the release of certain records found responsive to the above request that were provided to you as part of our consultative process for confidential commercial information.

Accordingly, we have given careful consideration to all of your specified grounds for nondisclosure. As a result, we have determined that the enclosed records will be released to the requester.

We will not release these records until March 1, 1990 so that you may take any legal action you deem appropriate.

Should you have any questions, please contact Mr. Dave Henshall at (703) 274-4400 or by facsimile at (703) 274-5359.

Sincerely,

Sophie Emami, Chief
Information Resources
Management Branch

Enclosures
a/s

FINAL NOTICE TO SUBMITTER ON PREDISCLOSURE NOTIFICATION

DEFENSE CONTRACT AUDIT AGENCY

Interoffice Memorandum

CMR 502.5
I-90-009-H

TO: PLD

FROM: CMR

SUBJECT: FOIA Status of Processing Inquiry

In our 16 January 1990 ICM, we referred the Freedom of Information Act request cited above to your office for action. Your response was due on 24 January 1990. As of the date of this memorandum, we have not received your response nor any communication concerning the status of this case.

The time restraints imposed are a matter of public law. Specific provisions allow for extensions to processing subject to certain qualifying rationale. Absent any response or relative disposition within the statutory time limits,, the requester may file for appellate or judicial remedies. Failure to provide a release determination as prescribed places the Agency in violation of 5 U.S.C. 552(a)(6)(A).

Please call Dave Henshall at extension 44401 with advice on the current status of the request.

Sophie Emami, Chief
Information Resources
Management Branch

cc: C

FOIA STATUS OF PROCESSING INQUIRY

DCAA Form 5020-1(R)
December 1985

Interoffice Memorandum

CMR 502.5
I-90-045-H

TO: OWN

FROM: CMR

SUBJECT: Freedom of Information Act Request

The enclosed Freedom of Information Act request from Mr. Don Wilson of The Kingsville Times is forwarded for your release determination (Encl 1). It has been categorized as an media request.

Please review the documents for release, and provide this office your determination with responsive documents. Any recommendations for withholding information should be conveyed as bracketed text, in red pencil, on the copies you provide. You should forward a copy of your response to this office with a completed DCAA Form 5410-4 (Encl 2) no later than 16 March 1990.

Should you have any questions, please contact Dave Henshall at extension 44400.

Sophie Emami, Chief
Information Resources
Management Branch

Enclosure
  Request
  DCAA Form 5410-4

MEDIA REQUEST TASKING MEMORANDUM

DCAA Form **5020-1(R)**
December 1985

DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178

IN REPLY REFER TO

CMR 502.5
I-89-263-H

Mr. Robert I. Santurn
Public Consultants, Inc.
12000 Standard Way
Patterson, MD 20854

Ref: FOIA Case I-89-263-H
Acct: 21R3210.0004

Dear Mr. Santurn:

This is in reference to your October 27, 1989 Freedom of Information Act request and our response of December 1, 1989. As of this date, we have no record that payment in the amount of $98.55 was submitted to this Agency. Please advise this office concerning the status of your remittance.

Until this issue is resolved, processing on your January 24, 1990 request is suspended. If the matter is not resolved within 30 days from the date of this letter, your request will be administratively withdrawn.

Should you have any questions, please contact Mr. Dave Henshall at (703) 274-4400.

Sincerely,

Sophie Emami, Chief
Information Resources
Management Branch

NOTICE OF SUSPENSION OF PROCESSING FOR NON PAYMENT

DEPARTMENT OF DEFENSE
UNITED STATES OF AMERICA

DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178

IN REPLY REFER TO

CMR 503.4
I-90-170-H

Mr. Brenda Sandelhorn
Fisher Busch Associates
Suite 815
1198 Connecticut Avenue, N.W.
Washington, DC 20003-2201

Dear Ms. Sandelhorn:

This is in response to your July 16, 1990 Freedom of Information Act request received by this office on July 26, 1990. After a thorough search of Agency records, we have determined that we have no records responsive to your request.

Should you have any questions, please contact Mr. Dave Henshall at (703) 274-4400.

Sincerely,

Sophie Emami, Chief
Information Resources
Management Branch

NO RECORDS RESPONSE

DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178

IN REPLY REFER TO

CMR 502.5
I-88-376-H/W

Mr. Carl Simpson
Dankins, Dennison, Parker and Lewis
8934 Pennsylvania Avenue, N.W.
Washington, DC 20037-4567

Dear Mr. Simpson:

This is in response to your December 21, 1988 letter requesting documents under the Freedom of Information Act. Based on the information you have made available to us, we have determined your request is for a commercial use pursuant to 5 USC §552 and our implementing regulation DCAAR 5410.8.

The term "commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

As a commercial use requester, you will be assessed applicable search, duplication and review costs. Review refers to the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of the document is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Your letter lacks an adequate statement on your willingness to pay the fees associated with your request (search, reproduction, and review) and we need such a statement before processing your request.

Our estimate of the fees/charges for your request is $892,189.40. This includes: 3,753 hours of clerical search at $12.00 per hour: 2,541 hours of professional search at $25.00 per hour: 176,936 pages of duplication at $.15 per page: 4 hours of clerical review at $12.00 per hour: 30,251 hours of professional review at $25.00 per hour and: 17 hours of executive review at $45.00 per hour.

Since your request exceeds $250.00, a portion of the estimated fees may be collected in advance. This partial prepayment is set at $50,000.00.

You should make prepayment payable to the Defense Contract Audit Agency, and forward it to the Defense Contract Audit Agency, ATTN: CMR (FOIA), Cameron Station, Alexandria, Virginia 22304-6178.

NOTICE OF PROCESSING COSTS SEEKING PARTIAL PREPAYMENT

As this estimate is preliminary, we will bill you for the actual charges when we provide you our release determination. These charges may be lower than the amount specified in your statement; however, should the charges exceed those specified in your statement, we will suspend processing on your request and ask you for another statement based on a revised estimate.

This notice should not be construed as an indication of the availability of the documents requested. We can make such determinations only by examining their content. You will remain liable for assessable charges in processing your request regardless of the nature of our disclosure determinations.

Should you disagree with us concerning the commercial use category classification, please provide your justification for consideration in support of your claim.

Once we receive your prepayment, we will begin processing your request. If you do not provide a response within thirty days of this letter, we will consider that you have decided to withdraw your request.

Should you have any questions, please call Mr. Dave Henshall at (703) 274-4400.

Sincerely,

Sophie Emami, Chief
Information Resources
Management Branch

NOTICE OF PROCESSING COSTS SEEKING PARTIAL PREPAYMENT

Interoffice Memorandum

CMR 502.5
I-90-173-E/H

TO: CPS

FROM: CMR

SUBJECT: Freedom of Information Act Request

The enclosed Freedom of Information Act request from Ms. Donna W. Barker is forwarded for your release determination (Encl 1). It has been categorized as an other use request.

Please review the documents for release, and provide this office your determination with responsive documents. Any recommendations for withholding information should be conveyed as bracketed text, in red pencil, on the copies you provide. You should forward a copy of your response to this office with a completed DCAA Form 5410-4 (Encl 2) no later than 14 August 1990.

Should you have any questions, please contact Dave Henshall at extension 44400.

Sophie Emami, Chief
Information Resources
Management Branch

Enclosure
- Request
- DCAA Form 5410-4

OTHER USE TASKING MEMORANDUM

DCAA Form **5020-1(R)**
December 1985

Interoffice Memorandum

CMR 502.5
I-89-134-C

TO: O

FROM: CMR

SUBJECT: Freedom of Information Act Request

The enclosed Freedom of Information Act request, referred to us by the Central Region from Mr. Robert L. Dunn of the Public Insurance Management Society, Inc., is forwarded for your action (Encl 1). The request has been categorized as an other use request and may be assessed charges which recover the full direct costs of searching for and duplicating the records sought after waiver of the first two hours of search and first 100 pages of reproduction.

Please provide an estimate of assessable charges for the request on the attached DCAA Form 5410-3 (Enclosure 2), for applicable search and duplication review costs.

a. If the assessable charges exceed $15.00, please provide your cost estimate and return it to this office no later than 30 June 1989.

b. If assessable charges do not exceed $15.00, please review the documents for release under DCAA Regulation 5410.8, and provide this office your determination with releasable documents. Any recommendations for withholding information should be conveyed as bracketed text, in red pencil, on the copies you provide. You should forward your response to this office with a completed DCAA Form 5410-4 (Enclosure 3) no later than 11 July 1989.

Should you have any questions, please contact Dave Henshall, CMR, at 274-4400.

Sophie Emami, Chief,
Information Resources
Management Branch

Enclosures
1. FOIA Request
2. DCAA Form 5410-3
3. DCAA Form 5410-4

OTHER USE TASKING MEMORANDUM FOR COST ESTIMATE OR FULL PROCESSING

DCAA Form **5020-1(R)**
December 1985

DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178

IN REPLY REFER TO

CMR 502.5
I-88-346-H

Chief Executive Officer
USA Instruments, Inc.
3479 West Virginia Boulevard
Willow, TX 76107

REGISTERED
RETURN RECEIPT REQUESTED

Dear Sir:

This is in reference to a December 2, 1988 Freedom of Information Act request from Mr. Ellis T. Smith of Brown Consultants for copies of Agency records related to Material Requirements Planning (MRP) Systems and Material Management and Accounting Systems (MMAS).

Under the provisions of the Freedom of Information Act, we must determine whether these documents, or any part of them, contain confidential business information that is proprietary to your company and that should be withheld, therefore, from public disclosure under 5 U.S.C 552(b)(4). If the documents contain no propriety information, we will release each document in it's entirety. If we determine, that some material in a document is proprietary, the Freedom of Information Act requires us to segregate and withhold the proprietary portion and to release the rest to the requester.

Please review the enclosed documents. If you believe that any portion of the material in them is exempt from release, answer the following questions in sufficient detail to demonstrate, as to each portion, that the material should be withheld.

1. Was the information transmitted to, and received by DCAA in confidence? Please give details.

2. To the best of your knowledge, is the information currently available in public sources?

3. Does your company customarily treat this information, or this type of information, as confidential? Please explain why.

4. Would public disclosure of this information be likely to cause substantial harm to the competitive position of your company? If so, how?

PREDISCLOSURE NOTIFICATION

Please provide your response to the above questions to this office no later than August 10, 1989. If your response has not been received by this date, the requested materials will be released in their entirety.

Should you have any questions, please contact Mr. Dave Henshall at (703) 274-4400.

Sincerely,

Sophie Emami, Chief
Information Resources
Management Branch

Enclosures
a/s

PREDISCLOSURE NOTIFICATION

DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178

IN REPLY REFER TO

CMR 502.5
I-89-346-H

Mr. Joe Burdena
Robocon Corporation
Government Digital Section (GDS)
Thomasson, Arizona 85301

REGISTERED
RETURN RECEIPT REQUESTED

Dear Mr. Burdena:

This is in reference to our letter of June 30, 1989 in which we requested your advice concerning the releasability of records generated by your office which were found responsive to a Freedom of Information Act request submitted by Ms. Eleanor Royce of Bryant Cable Connecters, Incorporated.

Your response to our predisclosure notification was due to this office on July 18 1989. As of this date, we have not received your reply. If we do not receive your reply by August 18, 1989, the records will be released to the requester.

Should you have any questions, please contact Mr. Dave Henshall at (703) 274-4400.

Sincerely,

Sophie Emami, Chief
Information Resources
Management Branch

PREDISCLOSURE NOTIFICATION REMINDER

DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178

IN REPLY REFER TO

CMR 503.4

Mr. Carl J. Dalton
3203 N. Ridge Avenue
Hot Springs, UT 71101

Dear Mr. Dalton:

This is in response to your February 20, 1990 Privacy Act request in which you requested a copy of your security file.

Please find enclosed the records you requested. Additional records may be available from the Defense Investigative Service, Personnel Investigations Center, ATTN: D0601.1, P.O. Box 1211, Baltimore, MD 21203-1211.

Should you have any further questions, please contact Mr. Dave Henshall at (703) 274-4400.

Sincerely,

Sophie Emami, Chief
Information Resources
Management Branch

Enclosures
a/s

PRIVACY ACT RESPONSE

DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178

IN REPLY REFER TO

CMR 502.4

Mr. Edward L. Lowe
1808 Buena Vista Lane
Poncho Verde, CA 96203

Dear Mr. Lowe:

This is an interim response to your July 18, 1990 Freedom of Information/Privacy Act request in which you requested a copy of your medical records from Emory University Hospital which were released to this Agency with your consent in the course of a security investigation.

Please be advised that your request is currently being processed by this office. In order to facilitate further processing however, we must have verification of your identity in the form of a notarized statement on your original request. Your original request, which was received by this office on July 23, 1990, is enclosed herewith for your convenience in satisfying this requirement.

Should you have any questions, please contact Mr. Dave Henshall at (703) 274-4400.

Sincerely,

Sophie Emami, Chief
Information Resources
Management Branch

Enclosure
a/s

PRIVACY INTERIM RESPONSE SEEKING VERIFICATION OF IDENTITY

DEFENSE CONTRACT AUDIT AGENCY

Interoffice Memorandum

CMR 503.4

TO: CPS

FROM: CMR

SUBJECT: Privacy Act Request - Gail P. Loren

The enclosed Privacy Act request, referred to us by the Defense Investigative Service in their letter of 9 July 1990, from Ms. Gail P. Loren is forwarded for your action (Encl 1).

Please review your files for any records responsive to this request, and provide this office with copies of all responsive documents. Any recommendations for withholding information should be conveyed as bracketed text, **in red pencil**, on the copies you provide. You should forward a copy of your response to this office no later than 1 August 1990.

Should you have any questions, please contact Dave Henshall, CMR at extension 44400.

Sophie Emami, Chief
Information Resources
Management Branch

Enclosure
Request

PRIVACY ACT REQUEST - TASKING MEMORANDUM

DCAA Form **5020-1(R)**
December 1985

DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178

IN REPLY REFER TO

CMR 502.5
I-90-205-H

Mr. Robert E. Sanders
Landers and Young Management
10003 Sanders Way
Palson, MD 20899

Dear Mr. Sanders:

This is in response to your August 23, 1990 letter, received by this office on August 29, 1990, requesting a copy of our Index of DCAA Memorandums for Regional Directors, DCAAI 5025.13, under the Freedom of Information Act. Please find enclosed a copy of the publication you requested with our compliments. **You should note that since this publication is available from an established distribution center, it is not necessary to request it under the Freedom of Information Act. Publications may be obtained by writing to "CMO" at the above address.**

If we can be of further assistance, please feel free to contact us again.

Sincerely,

Sophie Emami
Chief, Information Resources
Management Branch

Enclosure
a/s

cc: CMO

PUBLICATIONS RESPONSE WITH ADVISORY

DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178

IN REPLY REFER TO

CMR 502.5
I-90-043-H

MEMORANDUM FOR THE DIRECTOR, DEFENSE LOGISTICS AGENCY, ATTENTION: DLA-XAM, CAMERON STATION, ALEXANDRIA, VA 22304-6100

ATTENTION: Freedom of Information Act Officer
Mr. Thomas Alexander

SUBJECT: Freedom of Information Act Request

We identified documents(s) controlled/originated by your office as responsive to a Freedom of Information Act request submitted by Mr. Dan Wallace of The Dawson Times. We are referring the document(s) for a release determination and direct response to the requester in the enclosed action (Enclosure 1).

A copy of our letter to the requester is provided at Enclosure 2. Should you have any questions, please contact Mr. Dave Henshall at (703) 274-4400.

Sophie Emami, Chief
Information Resources
Management Branch

Enclosures
1. FOIA Request/Documents
2. HQ, DCAA Response

REFERRAL TO ANOTHER AGENCY

DEPARTMENT OF DEFENSE
UNITED STATES OF AMERICA

DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178

IN REPLY REFER TO

CMR 502.5
I-90-025-H

MEMORANDUM FOR THE REGIONAL DIRECTOR, CENTRAL

ATTENTION: Ms. Virginia Miller
Freedom of Information Act Officer

SUBJECT: Freedom of Information Act Request

The enclosed Freedom of Information Act request from Mr. Lawrence T. Antonelli is forwarded to you for a release determination and direct response to the requester in the enclosed action (Enclosure 1).

A copy of our letter to the requester is provided at Enclosure 2. Should you have any questions, please contact Dave Henshall at (703) 274-4400.

Sophie Emami, Chief
Information Resources
Management Branch

Enclosures
1. FOIA Request
2. HQ, DCAA Response

REFERRAL OF REQUEST WITHIN THE AGENCY

DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178

IN REPLY REFER TO

CMR 502.5
I-90-235-H

Dr. Florence Harris
Ratton Research Systems
1256 Spring Branch Boulevard
Twin Pines, FL 31564

Dear Dr. Harris:

This is in response to your August 17, 1990 Freedom of Information Act request referred to us by the DoD Office of Inspector General in their letter of October 3, 1990.

Please find enclosed the record referred to this office for release determination which is provided to you in its entirety. Since processing fees do not exceed our fee waiver threshold, all assessable processing fees have been waived.

Should you have any questions, please call Mr. Dave Henshall at (703) 274-4400.

Sincerely,

Sophie Emami, Chief
Information Resources
Management Branch

Enclosure
a/s

RELEASE OF REFERRED RECORDS WITH FEE WAIVER

DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178

IN REPLY REFER TO

CMR 502.5
I-90-065-H

Mr. Joseph Louis
Penthaus Powers Company
P.O. Box 7890
New Rivers, CA 92987-7890

Ref: FOIA Case I-90-065-H
Acct: 21R3210.0004

Dear Mr. Louis:

This is in response to your February 26, 1990 letter requesting a document under the Freedom of Information Act. This also refers to our interim response of March 27, 1990, which provided a cost estimate of processing fees, and your fee declaration of April 6, 1990. Please find enclosed the record you requested.

> MRD 86-PAD-95, 20 Jun 1986, subject: Audit Guidance on Implementation of DoD Directive 5000.44 "Industrial Modernization Incentives Program (IMIP).

Freedom of Information Act processing fees in the amount of $39.55 have been assessed for this request. This includes: 1 hour of clerical search at $12.00 per hour; 1 hour of professional search at $25.00 per hour and; 12 pages of reproduction at $.15 per page.

Please send a check or money order payable to the Defense Contract Audit Agency, along with a copy of this letter, and forward it to the attention of "CMR" at the above address. If not received within 30 days after this billing, interest will accrue to the amount until receipt of payment in full at the rates set by the Secretary of the Treasury as provided under the Debt Collection Act of 1982 (Public Law 97-365).

Should you have any questions, please contact Mr. Dave Henshall at (703) 274-4400.

Sincerely,

Sophie Emami, Chief
Information Resources
Management Branch

Enclosures
a/s

RESPONSE WITH FEE ASSESSMENT

DEPARTMENT OF DEFENSE

DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178

IN REPLY REFER TO

CMR 502.5
I-90-165-H

Mr. Bob E. Finestein
Universal Combat Systems
P.O. Box 1998
Harrisburg, PA 17405-1998

Dear Mr. Finestein:

This is an interim response to your October 5, 1990 Freedom of Information Act request received by this office on October 17, 1990.

Our Mid-Atlantic Region operates its own FOIA office and would have cognizance over the records you have requested. They have been sent a copy of your request and will respond directly to you concerning the availability of the records you requested.

Should you have any questions, please call Mr. Dave Henshall at (703) 274-4400.

Sincerely,

Sophie Emami, Chief
Information Resources
Management Branch

REQUESTER ADVISORY OF REFERRAL ACTION

DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178

IN REPLY REFER TO

CMR 502.4
I-90-036-H

Mr. Mark Benson
1901 West Howard Street
Dallas, TX 79876

Dear Mr. Benson:

This is response to your undated Freedom of Information Act request received by this office on February 13, 1990.

The text of your request has been carefully reviewed to determine the extent of assistance this office is capable of providing based on the scope of your request. Essentially, you are seeking any and all records that may exist regarding a number of individuals and corporations as well as a variety of commodities. Based on the information you have provided, we have determined that your request is not reasonably described.

Generally, a record is not reasonably described unless the description contains sufficient information to permit an organized, nonrandom search based on filing arrangements and existing retrieval systems, or unless the request contains sufficient information to permit inference of the elements needed to conduct a search.

Identification of the record desired is the responsibility of the requester. Should you be able to provide more definitive information concerning the records you desire, we will be happy to process your request.

The descriptive information may be provided in one or both of the following ways:

> File related and including information such as type of record (for example: contract/solicitation or audit number, technical analysis of cost proposal, commodity type, etc. . .), title, index citation, subject area, date the record was created, and originator.
>
> Event related and including the circumstances that resulted in the record being created, or the date and circumstances surrounding the event the record covers.

RESPONSE INDICATING REQUEST NOT REASONABLY DESCRIBED

CMR 502.4
I-90-036-H

Please feel free to contact us again if we can be of further assistance.

Sincerely,

Sophie Emami, Chief
Information Resources
Management Branch

RESPONSE INDICATING REQUEST NOT REASONABLY DESCRIBED

Interoffice Memorandum

CMR 502.5
I-90-194-H

TO: O and P

FROM: CMR

SUBJECT: Freedom of Information Act Request

The enclosed Freedom of Information Act request from Mr. Daniel Carlson of South Pacific Electronics, Inc., is forwarded for the purpose of obtaining a cost estimate only of assessable fees for processing the request (Encl 1). The request has been categorized as a commercial use request and may be assessed charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought.

The term "review" refers to the process of examining documents located in response to a FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general legal policy issues regarding the application of the exemption.

Please provide your cost estimate only on the attached DCAA Form 5410-3 (Encl 2), for applicable search, duplication, and review costs, and return it to this office no later than 5 September 1990. For each applicable category, enter the time expended to the nearest 15 minutes in the total hours column.

Should you have any questions, please contact Dave Henshall, CMR, at 274-4400.

Sophie Emami, Chief
Information Resources
Management Branch

Enclosures
1. FOIA Request
2. DCAA Form 5410-3

TASKING FOR COST ESTIMATE ON COMMERCIAL USE REQUEST

DCAA Form 5020-1(R)
December 1985

Interoffice Memorandum

CMR 502.5
I-90-088-H

TO: DL

FROM: CMR

SUBJECT: Freedom of Information Act Request

The Department of the Air Force, Office of Special Investigations identified documents originated/controlled by your office as responsive to a Freedom of Information Act request submitted by Ms. Karen Franklin of The New Mason Weekly. They have referred these documents for a release determination and direct response to the requester in the enclosed action (Encl 1).

Please review the document for release under DCAA Regulation 5410.8, and provide us your release determination. Any recommendations for withholding information should be conveyed as bracketed text, in "RED" pencil, on the copies provided. You should forward your response to this office with a completed DCAA Form 5410-4 (Encl 2) no later than 12 July 1990.

Should you have any questions, please contact Dave Henshall, CMR at extension 44400.

Sophie Emami, Chief
Information Resources
Management Branch

Enclosures
1. FOIA Request/Documents
2. DCAA Form 5410-4

TASKING FOR RELEASE RECOMMENDATION ON A REFERRED DOCUMENT

DCAA Form 5020-1(R)
December 1985

DEFENSE CONTRACT AUDIT AGENCY

Interoffice Memorandum

CMR 502.5
I-90-245-H

TO: CMO O P

FROM: CMR

SUBJECT: Freedom of Information Act Request

The enclosed Freedom of Information Act request from Ms. Margaret Williams of Peterson Poers, Inc., is forwarded for your release determination and direct reply to this office (Enclosure 1). It has been categorized as a commercial use request and the requester has agreed to pay all search, review, and duplication costs.

Please review the documents for release, and provide this office your determination with responsive documents. Any recommendations for withholding information should be conveyed as bracketed text, **in red pencil**, on the copies you provide. You should forward your response along with a completed DCAA Form 5410-4 (Enclosure 2) no later than 5 November 1990.

Should you have any questions, please contact Dave Henshall at extension 44400.

Sophie Emami, Chief
Information Resources
Management Branch

Enclosures
- FOIA Request
- DCAA Form 5410-4

TASKING MEMORANDUM FOR A COMMERCIAL USE REQUEST

DCAA Form 5020-1(R)
December 1985

Interoffice Memorandum

CMR 502.5
I-90-184-H

TO: O

FROM: CMR

SUBJECT: Freedom of Information Act Request

We have identified two Memorandums for Regional Directors (MRDs) originated by your office as responsive to a Freedom of Information Act request submitted by Mr. Mark Landorn of Cowell and Motts. The documents are being referred to you for a release recommendation to facilitate our direct response to the requester.

Please review the documents for release under DCAA Regulation 5410.8, and provide us your release recommendation. Any recommendations for withholding information should be conveyed as bracketed text, **in "RED" pencil**, on the copies provided. You should forward your response to this office no later than 13 August 1990.

Policy and Plans will respond to the last item for a Standard Audit Program. Should you have any questions, please contact Dave Henshall, CMR at extension 44400.

Sophie Emami, Chief
Information Resources
Management Branch

Enclosures
1. FOIA Request
2. Documents

TASKING MEMORANDUM FOR RELEASE RECOMMENDATION

DCAA Form **5020-1(R)**
December 1985

Interoffice Memorandum

CMR 502.5
I-90-193-H

TO: O and P

FROM: CMR

SUBJECT: Freedom of Information Act Request for MRDs

We have received a Freedom of Information Act request from Mr. George Koon of ABC Electronics for copies of various MRDs generated by your office (Encl 1).

As you are aware, many MRDs have been requested repeatedly by the general public. The practice of locating, reviewing for release, and duplicating the requested record is often an administrative burden on the office that generated the record. In light of this, we maintain copies of MRDs previously released, in whole or in part, to eliminate duplication of effort in producing responsive records. As a result, we ask that you only respond to those items highlighted on the original request.

Please review your documents for release under DCAA Regulation 5410.8, and provide this office your release recommendation with responsive documents. Any recommendations for withholding information should be conveyed as bracketed text, in red pencil, on the copies provided. Your narrative supporting the withholding of Agency records should state the specific "harm" realized if the record is released to the public. Boilerplate denial language should be avoided.

You should forward your response to this office with a completed DCAA Form 5410-4 (Encl 2) no later than 10 September 1990. Should you have any questions, please contact Mr. Dave Henshall at extension 44400.

Sophie Emami, Chief
Information Resources
Management Branch

Enclosures
1. FOIA Request
2. DCAA Form 5410-4

TASKING MEMORANDUM SEEKING RELEASE RECOMMENDATION ON MRDS

APPENDIX I

PRO FORMA PARAGRAPHS

PRO FORMA PARAGRAPHS

EXEMPTIONS

a. b(2). These documents are being denied under the provisions of 5 USC 552(b)(2) as it applies to operating rules and guidelines for auditors that must remian privileged in order for this Agency to adequately fulfill its mission.

b. b(4). These documents are being denied under 5 USC 552(b)(4) which provides for withholding confidential commercial, financial, or proprietary information received in connection with contracts if disclosure is likely to impair the Government's ability to obtain necessary information in the future. Release of a contractor's confidential commercial, financial, or proprietary information to a third party will significantly impair this Agency's ability to gain access to information which is essential to mission performance.

c. b(5)

(1) These documents are denied under 5 USC 552(b)(5) as it applies to interagency and intra-agency memorandums which would not be available by law to a party other than an agency in litigation with the agency. Exemption (b)(5) was enacted to safeguard the deliberative policymaking processes of Government. Disclosure of the deliberative policymaking process would impair this Agency's ability to efficiently and economically develop and implement the audit policies necessary to perform its mission.

(2) These documents are being denied under 5 USC 552(b)(5) which provides for withholding records that are exchanged among agency personnel and within and among DoD components or agencies as part of the preparation for anticipated administrative proceedings by an agency or litigation before a Federal court or administrative body.

(3) This document is being denied under the provisions of 5 USC 552(b)(5). This is a draft of an Agency document which contains predecisional attitudes regarding audit policy and procedures. Exemption (b)(5) was enacted for the purpose of safeguarding such deliberative policymaking processes of Government and to ensure uninhibited exchange of ideas of staff members. (If document will be released when published in final form, insert sentence stating that once document is finalized it will be made available to the public)

d. b(6). Certain information has been deleted to protect the privacy of the individual involved. In addition, other documents are being withheld under the provisions of 5 USC 552(b)(6) since the release would constitute a clearly unwarranted invasion of personal privacy. Personal data pertaining to and provided by the involved individual is of such a personal nature and is to inextricably intertwined with factual material taht it is virtually impossible to sufficiently excise this information to protectthe individual's privacy.

e. b(7)(A).

(1) These documents are being denied under the provisions of 5 USC 552(b)(7)(A). The (investigative agency) has asked that access to these documents be denied to avoid interference with law enforcement proceedings.

(2) These documents are being denied under the provisions of 5 USC 552(b)(7)(A). I have been advised by the (investigative agency) that DCAA's release of all or any part of these records would interfere with the law enforcement investigation currently pending within (investigative agency). Specifically, the release of these records would compromise if not destroy the orderly process of the (investigative agency) investigation by revealing the direction it is taking and adversely affecting the attitudes and cooperation of present or potential witnesses Divulging the information in these documents might result in counteractions which would thwart the interest of justice in this matter. Additionally, although DCAA is not a law enforcement agency, many were created as a result of actions taken in connection with the investigation being conducted for law enforcement purposes. Therefore, until that investigation has been completed and a decision has been rendered, I am obligated to protect the deliberative and decisionmaking processes of the investigating agency.

APPEAL RIGHTS

The following statement must be made on each response containing denials:

If you wish to appeal the determination cited in/on (paragraph (#), enclosure (#)), you may do so by writing within 60 days to Mr. John van Santen, Assistant Director, Resources, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304-6178.

MISSION STATEMENT

The mission of the Defense Contract Audit Agency is to perform audits of contractors and provide accounting and financial advise on contracts and subcontracts to activities responsible for procurement and contract administration. Therefore, this Agency would not maintain nor have cognizance over the records you have requested.

APPENDIX J

AGENCY FREEDOM OF INFORMATION AND PRIVACY ACT COORDINATORS

DEFENSE CONTRACT AUDIT AGENCY
OFFICES

(Alphabetically by State and City)

California

DCAA SOUTHWESTERN REGIONAL OFFICE
Attention: RCI-4
16700 Valley View Avenue, Suite #300
La Mirada, CA 90638-5830

DCAA WESTERN REGIONAL OFFICE
Attention: RCI-7
450 Golden Gate Avenue, Box 36116
San Francisco, CA 94102-3563

Georgia

DCAA EASTERN REGIONAL OFFICE
Attention: RCI-1
805 Walker Street
Marietta, GA 30060-2731

Massachusetts

DCAA BOSTON REGIONAL OFFICE
Attention: RCI-2
424 Trapelo Road
Waltham, MA 02154-6397

Pennsylvania

DCAA MID-ATLANTIC REGIONAL OFFICE
Attention: RCI-6
600 Arch St., Room 4400
Philadelphia, PA 19106-1604

Texas

DCAA CENTRAL REGIONAL OFFICE
Attention: RCI-3
106 Decker Court, Suite 300
Irving, TX 75062-2795

Virginia

DCAA HEADQUARTERS
Attention: CMR
Cameron Station
Alexandria, VA 22304-6178

HEADQUARTERS, DCAA

PRIMARY

Defense Contract Audit Agency
Attention: CMR
Cameron Station
Alexandria, Virginia 22304-6178

Dave Henshall
GM-343-13

(TEL) (703) 274-4400
(FAX) (703) 274-5359
(cc:mail) *CMR
(Hours) 0700-1530

ALTERNATE

Defense Contract Audit Agency
Attention: CMR
Cameron Station
Alexandria, Virginia 22304-6178

Sophie Emami
GM-343-14

(TEL) (703) 274-4400
(FAX) (703) 274-5359
(cc:mail) *CMR
(Hours) 0830-1700

CENTRAL REGION

PRIMARY

Defense Contract Audit Agency
Attention: RCI-3
106 Decker Court, Suite 300
Irving, Texas 75062-2795

Virginia Miller
GS-343-11

(TEL) (214) 650-4893
(FAX) (214) 650-7797
(cc:mail) *RCI-3
(Hours) 0700-1530

ALTERNATE

Defense Contract Audit Agency
Attention: RCI-3
106 Decker Court, Suite 300
Irving, Texas 75062-2795

Valerie Adamson
GS-343-07

(TEL) (214) 650-4893
(FAX) (214) 650-7797
(cc:mail) *RCI-3
(Hours) 0815-1645

EASTERN REGION

PRIMARY

Defense Contract Audit Agency
ATTN: RCI-1
805 Walker Street
Marietta, GA 30060-2731

Retta Hodges
GS-343-12

(TEL) (404) 429-6717
(FAX) (404) 422-3428
(cc:mail) *RCI-1
(Hours) 0730-1600

ALTERNATE

Defense Contract Audit Agency
ATTN: RCI-1
805 Walker Street
Marietta, GA 30060-2731

Barbara Barretta
GS-344-07

(TEL) (404) 429-6719
(FAX) (404) 422-3428
(cc:mail) *RCI-1
(Hours) 0730-1600

MID-ATLANTIC REGION

PRIMARY

Defense Contract Audit Agency
Mid Atlantic Regional Office
Attention: RCI-6
600 Arch St., Room 4400
Philadelphia, PA 19106-1604

Judy Smith
GS-343-12

(TEL) (215) 597-5403
(FAX) (215) 597-3533
(cc:mail) *RCI-6
(Hours) 0730-1600

ALTERNATE

Defense Contract Audit Agency
Mid Atlantic Regional Office
Attention: RCI-6
600 Arch St., Room 4400
Philadelphia, PA 19106-1604

Bert Wilson
GS-343-07

(TEL) (215) 597-5403
(FAX) (215) 597-3533
(cc:mail) *RCI-6
(Hours) 0630-1500

NORTHEASTERN REGION

PRIMARY

Defense Contract Audit Agency
Attention: RCI-2
424 Trapelo Road
Waltham, MA 02154-6397

Harvey Marks
GS-343-12

(TEL) (617) 647-8658
(FAX) (617) 647-8720
(cc:mail) *RCI-2
(Hours) 0730-1700

ALTERNATE

Defense Contract Audit Agency
Attention: RCI-2
424 Trapelo Road
Waltham, MA 02154-6397

John Haberle
GS-343-12

(TEL) (617) 647-8730
(FAX) (617) 647-8720
(cc:mail) *RCI-2
(Hours) 0730-1600

SOUTHWESTERN REGION

PRIMARY

Defense Contract Audit Agency
Attention: RCI-4
16700 Valley View Avenue, Suite 300
La Mirada, CA 90638-5830

Orville Shaw
GS-343-12

(TEL) (714) 228-7017
(FAX) (714) 228-7038
(cc:mail) *RCI-4
(Hours) 0630-1500

ALTERNATE

Defense Contract Audit Agency
Attention: RCI-4
16700 Valley View Avenue, Suite 300
La Mirada, CA 90638-5830

Mike Gross
GM-334-13

(TEL) (714) 228-7017
(FAX) (714) 228-7038
(cc:mail) *RCS-4
(Hours) 0700-1530

WESTERN REGION

PRIMARY

Defense Contract Audit Agency
Western Regional Office
Attention: RCI-7
450 Golden Gate Avenue, Box 36116
San Francisco, California 94102-3563

Earl Bottomley
GS-343-07

(TEL) (415) 556-4689
(FAX) (415) 556-1851
(cc:mail) *RCI-7
(Hours) 0700-1530

ALTERNATE

Defense Contract Audit Agency
Western Regional Office
Attention: RCI-7
450 Golden Gate Avenue, Box 36116
San Francisco, California 94102-3563

Greg Zagelow
GM-343-13

(TEL) (415) 556-3358
(FAX) (415) 556-1851
(cc:mail) *RCI-7
(Hours) 0700-1530

APPENDIX K

PRINCIPLES OF INFORMATION

PRINCIPLES
OF INFORMATION

It is the policy of the Department of Defense to make available timely and accurate information so that the public, Congress, and the news media may assess and understand the facts about national security and defense strategy.

Requests for information from organizations and private citizens will be answered in a timely manner. In carrying out this policy, the following principles of information will apply:

- *Information will be made fully and readily available, consistent with statutory requirements, unless its release is precluded by current and valid security classification. The provisions of the Freedom of Information Act will be supported in both letter and spirit.*
- *A free flow of general and military information will be made available, without censorship or propaganda, to the men and women of the Armed Forces and their dependents.*
- *Information will not be classified or otherwise withheld to protect the government from criticism or embarrassment.*
- *Information will be withheld only when disclosure would adversely affect national security or threaten the safety or privacy of the men and women of the Armed Forces.*
- *The Department's obligation to provide the public with information on its major programs may require detailed public affairs planning and coordination within the Department and with other government agencies. The sole purpose of such activity is to expedite the flow of information to the public: propaganda has no place in Department of Defense public affairs programs.*

The Assistant Secretary of Defense for Public Affairs has the primary responsibility for carrying out this commitment.

Dick Cheney
Secretary of Defense